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62d Congress } 3d Session } HOUSE OF REPRESENTATIVES { Report No. 1335

REPORT

IN THE MATTER
OF THE

INVESTIGATION OF CHARGES THAT THE INTERIOR DEPARTMENT PERMITTED THE UNLAWFUL FENCING AND INCLOSURE OF CERTAIN LANDS OF THE PUBLIC DOMAIN IN THE STATES OF COLORADO AND WYOMING, AND MORE PARTICULARLY THE FENCING AND INCLOSURE OF 46,330 ACRES OF PUBLIC LANDS IN WYOMING AND 1,120 ACRES IN COLORADO BY THE WARREN LIVE STOCK COMPANY

PRESENTED BY MR. HENSLEY

From the Committee on Expenditures in the Interior Department

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January 16, 1913.—Referred to the House Calendar and
ordered to be printed, with illustrations

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EXPENDITURES IN THE INTERIOR DEPARTMENT.

(Committee room No. 296, House Office Building. Telephone 591. Meets each Monday.)

JAMES M. GRAHAM, Illinois, *Chairman*.

HENRY GEORGE, Jr., New York.
WALTER L. HENSLEY, Missouri.
OSCAR CALLAWAY, Texas.
FRANK W. MONDELL, Wyoming.
LOUIS B. HANNA, North Dakota.
CHARLES H. BURKE, South Dakota.

JOHN F. MCCARRON, *Clerk*.

SUBCOMMITTEE.

WALTER L. HENSLEY, Missouri, *Chairman*.

OSCAR CALLAWAY, Texas.
FRANK W. MONDELL, Wyoming.

REPORT.

IN THE MATTER OF THE

INVESTIGATION OF CHARGES THAT THE INTERIOR DEPARTMENT PERMITTED THE UNLAWFUL FENCING AND INCLOSURE OF CERTAIN LANDS OF THE PUBLIC DOMAIN IN THE STATES OF COLORADO AND WYOMING, AND MORE PARTICULARLY THE FENCING AND INCLOSURE OF 46,330 ACRES OF PUBLIC LANDS IN WYOMING AND 1,120 ACRES IN COLORADO BY THE WARREN LIVE STOCK CO.

January 16, 1913.

The Chairman Committee on Expenditures in the Interior Department:

The subcommittee appointed to investigate the charges that the Interior Department permitted the unlawful fencing and inclosure of 456,400 acres of the public domain in the States of Wyoming and Colorado, and more particularly the fencing and inclosure of 46,330 acres of public lands in Wyoming and 1,120 acres in Colorado by the Warren Live Stock Co., submits the following report:

Your committee has heard no oral testimony, but it has called upon the Department of the Interior for all the papers in connection with these charges and find from the documents submitted that on December 28, 1905, Secretary Hitchcock detailed Special Inspector E. B. Linnen and Assistant W. C. Hintze to visit Wyoming and Colorado and make a thorough investigation of the matter and submit to him all the facts; that on September 7, 1906, Mr. Linnen made the following report:

Cheyenne, Wyo., *September 7, 1906.*

Hon. E. A. Hitchcock,
Secretary of the Interior, Washington, D. C.

Dear Sir: I have the honor to make report of an investigation made in Laramie County, Wyo., in the near vicinity of Cheyenne, and in Weld County, Colo., south of Cheyenne, in the northern part of said State, as to the illegal fencing and unlawful inclosures of the Warren Live Stock Co., of which Senator Francis E. Warren is the principal owner, and of other stockmen in said vicinity.

Accompanied by Special Agent W. C. Hintze, I made a preliminary examination of conditions in the vicinity of Cheyenne, Wyo., and thereafter employed two competent surveyors who executed surveys of the eight illegal inclosures of the said Warren Live Stock Co.

I personally accompanied one of said surveyors on the ground and assisted in executing said surveys while Special Agent Hintze accompanied the other surveyor and likewise assisted him. Thus one or the other of us was at all times with said surveyors, personally assisting them and personally seeing and measuring all of the fences so surveyed.

I have the honor to inclose herewith duly certified plats of said surveys, prepared by Surveyors Sidney E. Bartlett and Charles P. Berry, who executed said surveys, which correctly show the fences of the Warren Live Stock Co.; the true location of same as checked with corners of public surveys found on the ground. Said plats correctly show the land grants made to the Union Pacific Railroad Co.; sections 16 and 36, which are school lands; all State selections and all entries of every other description made in the United States land office at Cheyenne, Wyo., and Denver, Colo., and which said plats correctly show all vacant Government lands. These plats I mark "Exhibits A, B, and C."

The result of said surveys shows that the Warren Live Stock Co. has 46,330 acres of Government lands unlawfully and illegally inclosed by barbed-wire fences in Laramie County, Wyo., and that said company also has 1,120 acres of the public domain unlawfully inclosed by wire fences in Weld County, Colo.

While engaged in making this investigation and these surveys we came in contact with many other unlawful inclosures of Government lands and from reliable sources secured evidence and data which enabled us to properly plat the fences and unlawful inclosures of numerous other stockmen in Laramie County, Wyo. These unlawful inclosures are properly shown on a large map of the southern portion of Laramie County, Wyo., herewith inclosed and marked "Exhibit D." Said map shows, in distinctive colors, the fences and unlawful inclosures of the numerous other stockmen; shows all grants made to railroad companies; all school lands, State selections, and entries of every description as taken from the records of the United States land office at Cheyenne, Wyo., and correctly shows the vacant Government lands illegally inclosed within the fences of each stockman, as follows:

	Acres.	Notation.[1]
Warren Live Stock Co., Cheyenne, Wyo. (W. W. Gleason, general manager).	32,440	
John Arbuckle (Edgar Boyce, general manager), Cheyenne, taken from actual survey. (This is the Arbuckle of coffee fame.)	32,000	Sued.
Colin & Hunter, Cheyenne, Wyo	36,620	Sued; took down.
G. H. Gilland, Egbert, Wyo	21,120	Notice; moved some.
A. Wilkinson, Egbert, Wyo	5,120	Moved fence.
John Wilkinson, Pine Bluff, Wyo	21,520	Notice.
John & Anthony Wilkinson, Pine Bluff, Wyo	35,910	Do.
David & Coad, Cheyenne, Wyo	36,940	Suit—Coad.
D. H. Kooker, banker, Des Moines, Iowa (Wyoming Cattle Co.)	31,120	Sued.
Chicago Cattle Co	20,720	Do.
John Thomas, Cheyenne, Wyo	18,120	Notice.
William Moffatt, Goldsmith, Wyo	37,020	Do.
R. S. Van Tassel, Cheyenne, Wyo	13,240	Sued.
Mrs. C. M. Fullerton, Cheyenne, Wyo	6,480	Notice.
William Lannan, Cheyenne, Wyo	7,200	Notice; sued.
James Dolan, Cheyenne, Wyo	6,120	Sued.
John O'Neil, Cheyenne, Wyo	3,160	Tore down.
Ora Haley, Laramie, Wyo	6,600	Indicted in Colorado; sued; Wyoming.
Mrs. Mary Gilchrist, Cheyenne, Wyo	1,440	Moved fence.
Hersig Bros. (Charles and Fred), Cheyenne, Wyo	13,060	Sued.
D. R. Whittaker, Cheyenne, Wyo	15,500	Do.
Dr. Carey	12,140	Notice.
F. P. Williams, Cheyenne, Wyo	6,200	Fence down.
Harry Farthing, Cheyenne, Wyo	6,200	Notice.
Mrs. Martha Fergerson, Hecla, Wyo	1,480	Do.
H. C. Roberts, Cheyenne, Wyo	640	Do.
Wyoming Hereford Association, Cheyenne, Wyo	1,120	New entries.
Jesse Cole, Hecla, Wyo	1,160	Notice.
Francis Wilkinson, Cheyenne, Wyo	960	Do.
William Dunstan, Cheyenne, Wyo	800	Sued.
William Swinbank, Cheyenne, Wyo	3,280	Notice.
Peter Keenen, Killsdale, Wyo	3,600	Do.
J. C. Gilland, Cheyenne, Wyo	2,780	Do.
T. D. Holt, Hecla, Wyo	640	Notified.
Warren Live Stock Co., William Moffatt, et al	13,890	Fence torn down.
Total acres illegally inclosed, as shown by map D and C	456,400	

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[1] Subsequent action taken by the Department upon the E. B. Linnen report and the results.

In addition to the above, Robert P. Allen (notice) and A. W. Bristol (marshal tore down 24 miles) have large illegal inclosures on Little Bear Creek, about 40 miles north of Cheyenne. Likewise has the Swan Land & Cattle Co. (notice; fence torn down) and John Underwood (notice). William Moffat has other lands inclosed illegally north of that, as shown by said large plat. W. B. Miner, of Fort Collins, Colo., a former partner of Senator Warren in the cattle business, has Government lands illegally inclosed in northern Colorado. Likewise has Ora Haley (indicted; abated; Colorado) and Thomas O'Neill (abated), above referred to. This will make more than half a million acres of Government lands illegally inclosed in the near vicinity of Cheyenne, Wyo.

A careful inspection of said large plat will show you that practically the whole southern portion of Laramie County, Wyo., is unlawfully inclosed by said stockmen. This area of country extends 30 miles north from Cheyenne, Wyo.; east to the west boundary of Nebraska, about 40 miles; south to the northern boundary of Colorado, about 10 miles; and west for 24 miles.

These lands have been illegally inclosed for many years by wire fences erected and maintained by said stockmen. Some of such fences thus unlawfully inclosing the public domain have been standing for from 15 to 24 years.

Persons who have settled on lands within said unlawful inclosures have been harassed by said stockmen and their employees and agents; their stock has been driven off; their pastures eaten out by the stockman's sheep and cattle; their fences cut; windows broken in their houses. They have been threatened and intimidated and everything has been done by the owners of said illegal fences and their agents and employees to make it uncomfortable and a hardship for such settlers who filed within their pastures to continue to live there. They have forced them to abandon the lands so filed upon or to sell out.

So successful have the stockmen been in thus driving out the settlers that to-day there are less actual bona fide settlers living in said scope of country than there were 15 or 20 years ago. They have been forced to sell out to the stockmen or abandon the lands so filed upon.

While engaged in executing these surveys the first settler we found south of Cheyenne, Wyo. (other than the stockmen who had the unlawful inclosures), lived 14 miles from Cheyenne, in the northern part of Colorado, while the first settler north lived 31 miles from Cheyenne. Thus it will be seen that this whole section of the country is controlled by the stockmen.

To enable us to make a proper and correct survey of the fences and illegal inclosures of the said Warren Live Stock Co., I employed as driver and chainman one Elmer E. Harriman, of Cheyenne, Wyo., who had previously been in the employ of the Warren Live Stock Co. for five years—from 1901 to 1905, inclusive. During some time of such period he had ridden the fences for said cattle company lying south of Cheyenne, in Wyoming and in northern Colorado, and thus he was very familiar with the fences and the true location of same. He was personally present during all of the said surveys, and rode or chained every foot of said fences. In order that I would be positively sure of the fences of said Warren Live Stock Co. in northern Colorado, I employed as chainman one Francis D. Mantey, who resides on a ranch near Carr, Colo., and who has lived there all of his life. He or his father, D. Mantey, was personally present during all of said surveys in northern Colorado, and rode or chained every foot of said fences. They were very familiar with same and the true location thereof because of the fact that their ranch in northern Colorado is entirely surrounded by the fences and inclosures of said Warren Live Stock Co., and they have on numerous occasions complained of such unlawful inclosures. Said D. Mantey has resided in that vicinity for the last 33 years, and his son Joseph, who is 26 years of age, was born on said ranch and has resided there all of his life.

The true location of the fences of the Warren Live Stock Co. lying to the north of Cheyenne, in the State of Wyoming, was furnished me by one Charles Thomas, of Cheyenne, Wyo., a stockman, who has ridden the range in that vicinity for the past 27 years, and who is personally well acquainted with every foot of the fence and the true location thereof. Likewise he furnished me with considerable of the data and information to enable me to properly show the boundaries and fences of the various stockmen in Laramie County, Wyo., he being personally familiar with each and every pasture and the true location of the fences of the various stockmen, as shown by plat, Exhibit D, herewith, which is approximately correct as to all of the inclosures other than the Warren

Live Stock Co., which is a true and correct survey. I believe that the plat, Exhibit D, correctly shows the boundaries and fences of the other stockmen as thereon marked in distinctive colors and the areas illegally inclosed by each stockman will be found to be practically correct.

It will be observed that in one of the north pastures of the Warren Live Stock Co., designated on the plat as Warren's Horse Creek pasture, that there is about 2 miles on the east boundary thereof where the fence is not standing, but you will observe that further east are the fences of the Wilkinson inclosure, which makes a complete inclosure. Likewise there are other short distances where the wires are removed from the posts which are standing, but in the same direction fences of other stockmen or cross fences within the unlawful inclosure form a complete inclosure.

The whole country surrounding Cheyenne, Wyo., is one network of barbed wire fences and unlawful inclosures. The plat herewith, Exhibit D, shows approximately half a million acres of Government lands illegally inclosed. If we did but take the time, we could easily have shown double this amount within Laramie County, Wyo., to say nothing of other counties which are largely fenced.

I have also evidence which shows conclusively that the Government lands in Crook, Weston, and Natrona Counties are largely covered with huge networks of illegal fences. (See affidavits of Special Agents Hintze and Pugh herewith.) The said affidavit of Special Agent Pugh shows that B. B. Brooks, the present governor of the State of Wyoming, has Government lands illegally inclosed in Natrona County, in the vicinity of Casper, Wyo.

These conditions, as herein outlined, and these illegal fences have been maintained in the vicinity of Cheyenne, Wyo.—commencing within a mile and a half of the capitol—for the past 20 or more years, and this in the face of the fact that during such period special agents of the General Land Office have been stationed at this point. Furthermore, W. A. Richards, commissioner of the General Land Office, while governor of Wyoming, stationed at this point, could not help but have had knowledge of these conditions, which are well known to all citizens residing in this vicinity.

Former Special Agent W. E. Jenison, stationed at this point for four years, under date of January 6, 1906, reported to the Commissioner of the General Land Office "that said company was found engaged in removing their fencing from the public lands in the State of Wyoming." This reference to the illegal fencing of the Warren Live Stock Co.

Under date of February 15, 1906, N. J. O'Brien, special agent in charge, Denver, Colo., reported to the Commissioner of the General Land Office that he had "made an examination of the former inclosure of the Warren Live Stock Co., in the State of Colorado, and found the same to be wholly removed from the public domain."

Both of said statements were untrue, as said fences were then and are now still standing, as shown you by correct surveys and plats herewith transmitted.

In this connection it is pertinent to state that a large number of State selections have recently been made (within the past six months) within the unlawful inclosures of the Warren Live Stock Co., which selections are not yet approved by your office. Said State selections cover Government lands that had been illegally inclosed by said company for the past 20 years.

I desire to call your attention to the affidavits of Mrs. D. Mantey; her husband, D. Mantey; her son, F. J. Mantey; Elmer E. Harriman; Alex. Kirkbride; Van L. Gilford; Horace E. Adams; and D. W. Elliott, attorney; herewith inclosed, which show substantially the following:

First. That said Warren Live Stock Co., through its agents and employees, have, on numerous occasions, by force, threats, and intimidation, harassed and forced settlers on the public domain, who had filed within its pastures, to abandon same or to sell out to said company.

Second. That their unlawful fences inclosing the public domain have been standing for upward of 18 years.

Third. That persons in the employ of said company have filed on lands within its illegal inclosures for said company at the request of its general manager, W. W. Gleason, and that on some of the tracts so filed upon proofs have been made without complying with the public-land laws, and the lands were thereafter deeded to said company.

Fourth. That special agents of the General Land Office paid but little heed to complaints made by settlers as to these illegal inclosures and did not do their duty.

Fifth. The charge is made by Van L. Gilford that the officials of the United States land office, Cheyenne, Wyo., are in collusion with said Warren Live Stock Co. and its general manager, which prevented him from securing certain public lands within their illegal inclosure. He also charges Senator Warren with wrongfully obtaining lands which he (Gilford) had previousy scripped within his (Warren's) illegal inclosure. His affidavit also rejects upon commissioner W. A. Richards. (See same.)

Sixth. One of the affidavits of D. W. Elliott, attorney, Cheyenne, Wyo., charges absence and negligence on the part of the officials of the United States land office at Cheyenne, Wyo.

Seventh. That United States Attorney Timothy F. Burke is the administrator of the Gilchrist estate, which has Government lands illegally inclosed. It is charged that he collects an annual rental from such lands for said estate. He is also the attorney for Mrs. Mary Gilchrist, who made a fraudulent timber and stone proof on lands in section 18, township 14 north, range 60 west, Wyoming, and when protest against the same was offered, he, the said United States Attorney Burke, made the following statement in the presence of Horace E. Adams, Hecla, Wyo., and D. W. Elliott, attorney, Cheyenne, Wyo.:

"Mrs. Gilchrist can not commit a fraud on the Government by proving up on said land. She pays $2.50 per acre for said land and that is all it is worth, and so she can not commit any fraud on the Government by proving it up."

As stated in my report dated September 4, 1906, large areas of coal lands have been fraudulently obtained in the vicinity of Sheridan, Wyo., under the homestead and other land laws. The same is true as to coal lands in the vicinity of Kemmerer, Wyo. Also that 9,500 acres of coal lands have been obtained by contract filings in the vicinity of Thermopolis, Wyo.

The affidavit of Special Agent W. B. Pugh, who has but very recently been stationed at this point, shows that he has no confidence in securing honest prosecutions and honest cooperation on the part of United States Attorney T. F. Burke. Letters heretofore addressed to you by Special Agent W. C. Hintze are to the same effect. This is also the opinion of P. R. Wadsworth, inspector of land offices and formerly special agent in charge at Rapid City, S. Dak. Personally I have never met these gentlemen, but from all the information I have been able to secure in this State, I am inclined to the belief that their judgment is correct.

There is at this point a strong coterie of politicians, with Senator F. E. Warren at its head. This combination controls the Federal officeholders. It seems hardly likely that honest prosecutions can be had with the present machinery in this State, and I believe it will be found as necessary to make radical changes here, as was the case in the States of Oregon and Nebraska, before results favorable to the Government can be accomplished. I believe a very honest and competent special attorney should be stationed here and every safeguard thrown around him. Conditions in this State would seem to warrant a vigorous campaign. The 60-day notice to persons who illegally fence the public domain should be dispensed with. I have a letter dated December 14, 1905, signed by former Special Agent W. E. Jenison, which states that: "I served the notice upon this company in October, 1905, to remove in 60 days."

He referred to the Warren Live Stock Co.

Under separate cover, by registered mail, I transmit three maps showing the inclosures of the Warren Live Stock Co., one large plat showing the southern portion of Laramie County, Wyo., marked to show unlawful inclosures of numerous stockmen, and one blue print of a correct survey of the pastures and unlawful inclosures of the P. O., or John Arbuckle, ranch, which survey was made by E. W. Glafcke, civil engineer, Cheyenne, Wyo., during the month of August, 1906, for said Arbuckle, at the request of Edgar Boyce, general manager. These are Exhibits A, B, C, D, and E.

Inclosed herewith are affidavits as follows: Two affidavits of D. W. Elliott, attorney, Cheyenne, Wyo.; two affidavits of Van L. Gilford, Goldsmith, Wyo.; affidavit of Elmer E. Harriman, Mrs. D. Mantey, F. J. Mantey, D. Mantey, Horace E. Adams, H. S. Hall, Mrs. W. A. Simmons, and John L. Morgan; Alex Kirkbridge, Special Agents W. C. Hintze and W. B. Pugh, and myself, together with numerous newspaper clippings and articles of various dates, relative to these illegal inclosures of the Warren Live Stock Co., and other conditions existing in this State.

It is pertinent to state that United States Attorney Burke informed Special Agent Pugh that—

"he had read the complaint and copy of letter of one 'stinker,' H. E. Adams, addressed to the Secretary of the Interior, complaining of him and others."

This would seem to indicate that he has been furnished with a copy of said letter by some person in the General Land Office, which letter had, by mistake, been referred to that office. Said letter of complaint of said Adams is herewith returned. I interviewed him, as will be noted from his affidavit.

I feel confident that an investigation in other localities in this State will show up many irregularities, and I believe this to be especially true in the Sundance and Douglas land districts. The land officers there are at least lax in performing their duty. In these districts there are United States commissioners who are aiding persons to defraud the Government and acting as agents for them. I now have the evidence showing the guilt of one H. J. Chassell, United States commissioner, Gillette, Wyo. He acted as the agent for one P. A. Yeast (under indictment in Nebraska, now convicted for same), in procuring soldiers' widows' filings within Yeast's illegal inclosures in this State.

All of which is respectfully submitted.

Very respectfully,

E. B. LINNEN,
Special Land Inspector.

ADDENDUM.

DENVER, COLO., *September 11, 1906.*

Hon. E. A. HITCHCOCK.

Since coming to Denver and checking the entries within the Warren inclosure in Colorado, I find that there are but 1,120 acres of Government lands now illegally inclosed in this State within the Warren Live Stock Co.'s inclosures. On the date, however, when special agent in charge, N. J. O'Brien, reported there were no illegal inclosures in this State by said company, the said Warren Live Stock Co. had then 15,940 acres of Government lands illegally inclosed by wire fences.

On April 14 and May 1, 1906, said Warren Live Stock Co., through the State of Colorado, made selections of 14,820 acres of Government lands, which said selections are still unapproved by your office.

Likewise thousands of acres of Government lands have been selected for the said Warren Live Stock Co. in Laramie County, lying south of Cheyenne, Wyo., by the State Land Board of Wyoming, within the past six months, which selections are still unapproved, and which prior to six months or less ago were illegally inclosed and had been so illegally inclosed by the said Warren Live Stock Co. for the past 20 or more years.

Very respectfully,

E. B. LINNEN,
Special Land Inspector.

STATE OF WYOMING, *County of Laramie, ss:*

I, W. C. Hintze, being first duly sworn, depose and say, that I am a special agent of the General Land Office, and that during the past year have been stationed at Buffalo, Wyo., with a territory comprising the Buffalo and Sundance, Wyo., land districts, and that:

In pursuance of investigations I had occasion to cross and recross the county of Crook, in the northeast part of the State, and found practically the whole county one huge network of illegal fences, one party fencing to his neighbor, and so on. The stage road from Moorcroft to Sundance in said county is simply a lane between barbed-wire fences, though such road is nearly all on Government land. Farther up toward the Montana line the pastures take the entire country, they fencing across the roads and completely inclosing the vicinity.

As the result of fence suits, brought upon my investigations and reports, something over 200,000 acres of public land have been thrown open to the public, but there is still four or five times that amount of public land still fenced in this county. In these cases I have sent out fence notices but have not completed the investigations for want of time.

In a few instances ranchers have obeyed fence notices without suit being brought, but as a rule they have a supreme contempt for the kind of prosecutions that have been brought in this State and therefore wait until suit is actually brought before tearing out their fences.

W. C. HINTZE.

Subscribed and sworn to before me this 4th day of September, A. D. 1906.

E. B. LINNEN,
Special Land Inspector, Department of the Interior.

STATE OF WYOMING, *County of Laramie, ss:*

I, W. B. Pugh, being first duly sworn, depose and say:

That I am a special agent of the General Land Office, now located at Cheyenne, Wyo., being in charge of field division No. 7. I have only been at this station for about a month last past. During such period I have made quite an extended investigation of the conditions as they exist in this section of Wyoming and have ascertained from personal observation and from information received from what I considered reliable sources the following conditions to exist:

Practically the whole of Laramie and Albany Counties lying within the 40-mile railroad limits has been inclosed and is now being used by stockmen for cattle pastures, being fenced with wire fences or buck-and-pole fences. Within the area above mentioned these inclosures have been effected by means of the fences erected on the odd sections granted to the Union Pacific Railroad Co., largely, thus effectually inclosing the lands which can be thus surrounded. On August 27 I submitted a report illustrating the manner in which these inclosures have been effected to the Commissioner of the General Land Office.

From reliable information I have ascertained that large illegal inclosures exist in Natrona County, Wyo., and territory adjacent, among those having such unlawful inclosures being B. B. Brooks, the present governor of the State of Wyoming. I contemplate making an early investigation of the said unlawful inclosures and lands in the vicinity.

At the present time I am the only agent representing the General Land Office special service in the said seventh district, said district comprising the entire State of Wyoming and the Rapid City (S. Dak.) land district, when I have represented to the General Land Office and firmly believe that the above field can not be efficiently covered with less than one good man to each two land districts, or at least four more special agents.

I have had two or three interviews with United States Attorney T. F. Burke since my arrival here, concerning the unclosed cases pending in the United States District Court for Wyoming involving unlawful inclosures of public lands. While in each of the said interviews Attorney Burke gave me verbal assurance of his willingness to cooperate with me, yet I left his office on each occasion with the impression that he did not regard offenses involving the unlawful inclosure of public lands as anything very serious and that he would not bring to the prosecution of such cases as might be presented by me any very great amount of zeal. This impression has been strengthened and confirmed by information imparted to me from reliable sources as to Mr. Burke's conduct and attitude in and toward cases of this character in which he has heretofore represented the Government.

Prior to my present assignment I was engaged for about a year as a special agent in investigating unlawful inclosures and other violations of the public land laws in the Valentine (Nebr.) land district, and as the result of investigations and inquiries made since coming to this station I am of the opinion that the conditions existing in Wyoming are as grossly in violation of law as those which were found to exist in Nebraska, and I have come to the conclusion that the remedying of these conditions speedily and effectually demands that some such general operations be inaugurated here as were executed in Nebraska.

W. B. PUGH,
Special Agent, General Land Office, Chief Field Division No. 7.

Subscribed and sworn to before me this 1st day of September, A. D. 1906.

E. B. LINNEN,
Special Land Inspector, Department of the Interior

STATE OF COLORADO, *County of Weld, ss:*

Mrs. D. Mantey, being first duly sworn, deposes and says: My name is Mrs. D. Mantey; my post-office address is Carr, Colo.; I reside on the Crystal Springs ranch, situate in sec. 32, T. 12 N., R. 67 W., Colorado. I have resided here since 1888. I have frequently made complaint to the Commissioner of the General Land Office; to N. J. O'Brien, special agent, General Land Office, Denver, Colo.; to Special Agent W. E. Jenison, Cheyenne, Wyo.; and to the Secretary of the Interior, as to the unlawful fencing of Government lands by the Warren

Live Stock Co., of which Senator F. E. Warren is principal owner. This company has had large tracts of the public domain illegally inclosed for the past 18 years, both in Colorado and Wyoming. Most all of the Government lands in this vicinity is now, and for the past 18 years has been, illegally inclosed by the Warren Live Stock Co. by wire fences. The special agents named, to whom I have reported this matter, have never made any honest effort to have these unlawful fences removed. They would write me letters full of evasive answers, full of promise, etc., and even go so far as to ask me to designate the lands, descriptions, etc., making it necessary for me to have a survey made before they would take any action, when it was well known to all persons residing in this vicinity and the vicinity of Cheyenne, Wyo., that for the past 20 years said Warren Live Stock Co. have had illegally inclosed thousands of acres of the public domain, both in the State of Colorado and the State of Wyoming. You can not go 2 miles outside of the city of Cheyenne, Wyo., the capital, without entering and seeing the inclosures and fences of the said Warren Live Stock Co., which said inclosure extends south many miles into Colorado. This is a fact generally known to all persons residing in this locality. It is also a fact, generally well known to all citizens residing in Cheyenne, Wyo., and vicinity, and to persons residing in northern Colorado, that practically the whole country and all of the Government lands lying for many miles in all directions from the city of Cheyenne, Wyo., are fenced by stockmen. Some of those who have Government lands fenced are as follows: R. W. Van Tassel, Cheyenne, Wyo.; Tom O'Neil, Cheyenne, Wyo.; Ora Hailey, Laramie, Wyo.; Albert Bristol, Little Bear, Wyo.; Hersig Bros., Cheyenne, Wyo.; Perry Williams, Cheyenne, Wyo.; and many others.

It is my firm belief that if these Government lands that have for so many years been inclosed were thrown open that they would be largely settled upon by bona fide homesteaders and settlers.

Persons who have filed within the Warren Live Stock Co.'s pastures have been persecuted by said company and its agents and employees, and have been run out and their stock run off the land; their fences have been cut; their pastures eaten out by the company's cattle, and everything has been done to make it unpleasant for settlers, and they have been compelled to sell out or move out. There are not now as many settlers in this vicinity as there were 20 years ago. They were compelled to sell out or move out of the country by said company. Our lands are entirely surrounded by the fences, lands, and unlawful inclosures of the Warren Live Stock Co., which fences they have maintained for the past 20 or more years.

On certain occasions, when complaint be made, the said Warren Live Stock Co. will remove short pieces of fence inclosing Government lands; that is, they will take short pieces of the wire down from its posts composing their fences, in the northern part of Colorado, in this vicinity, and then a short time later they again put up the wire and rebuild the fence and unlawful inclosure. Their fences inclosing the Government lands in northern Colorado in this vicinity are now all up with the exception of a short piece of fence, where the wire is now taken off the posts, off their west pasture, from the south boundary of Wyoming south for a short distance in the State of Colorado. This short opening is right in the vicinity of the home ranch of said Warren Live Stock Co., where they can keep out all stock not theirs and their own in said short opening.

We live 14 miles southwest of Cheyenne, Wyo., on the main road, and there is not a settler living between here and Cheyenne, but all the lands for miles on both sides of the road south of us and north and east to Cheyenne, Wyo., are fenced by said Warren Live Stock Co., a fact well known to most all persons who have any knowledge of the country. Francis E. Warren was president of said Warren Live Stock Co. when most of the fences were built.

Myself and husband and his brother have been making complaints about these unlawful inclosures of Government land, frequently, ever since the year 1888, and have never yet had any relief or honest action on the part of any Government official. No action taken, and the fences are still up.

Mrs. D. Mantey.

Subscribed and sworn to before me this 21st day of August, A. D. 1906, on the ranch near Carr, Colo.

E. B. Linnen,
Special Land Inspector.

I, D. Mantey, have read the above and foregoing affidavit of my wife, Mrs. D. Mantey, and am well acquainted with the facts therein set forth, which I know to be true in each and every particular, and I also sign, swear, and subscribe to same.

D. MANTEY.

Subscribed and sworn to before me this 21st day of August, A. D. 1906.

E. B. LINNEN,
Special Land Inspector.

ADDENDUM.

I desire further to state that I have never at any time written to Special Agent N. J. O'Brien, or any other person, stating that the fences of the Warren Live Stock Co. had been removed from the public domain. Further, I swear that I wrote to Special Agent N. J. O'Brien and to Special Agent W. E. Jenison, stating that if they would come to examine the fences and unlawful inclosures complained of, belonging to said Warren Live Stock Co., that I would meet them at the railroad station and drive them about, or have my husband, D. Mantey, or my son, Joseph Mantey, take them about and show them the fences which unlawfully inclose Government lands which were and are maintained by the Warren Live Stock Co., but they never came. I am advised that said Special Agent O'Brien has reported to the Commissioner of the General Land Office that he visited the lands in northern Colorado and found the fences of the said Warren Live Stock Co. removed, which had inclosed Government lands. This is a false statement, and if said Special Agent O'Brien was ever in this vicinity I, or none of my folks, or any other person in this vicinity, has knowledge of same, and we would surely, some of us, have heard of same. Likewise, if Special Agent Jenison has reported that the fences of said company were removed in Wyoming, the same is false, as the said company has now, and for the past 20 or more years has had, thousands of acres of Government lands illegally inclosed in both Colorado and Wyoming.

MRS. D. MANTEY.

Subscribed and sworn to before me this 25th day of August, A. D. 1906, at the ranch of D. Mantey, near Carr, Colo.

E. B. LINNEN,
Special Land Inspector.

Witnesses:
C. P. BERRY.
E. E. HARRIMAN.

STATE OF COLORADO, *County of Weld, ss:*

D. Mantey, being first duly sworn, deposes and says: My name is D. Mantey; I am 59 years of age; my post-office address is Carr, Colo. I am a ranchman, residing on a ranch about 6 miles from Carr, Colo., where I have resided continuously for the past 33 years. I am very well acquainted with the lands and fences which inclose lands in this vicinity and know the fences of the Warren Live Stock Co., in southern Wyoming and northern Colorado, lying southerly from Cheyenne, Wyo. I hereby certify that on Monday, August 27, 1906, I accompanied Inspector E. B. Linnen and Surveyer Charles Berry to the lands known as the Barton pasture, about 8 miles southwest from my ranch, which is owned and controlled by the Warren Live Stock Co., and there pointed out the fences belonging to said company, which inclose the lands and pasture within said inclosure, to said inspector and assisted in chaining around the whole of said inclosure, which was duly surveyed. The fences were all standing, making a complete inclosure.

I further certify that I have given to said inspector and surveyor such information and knowledge as I possessed to enable them to make a correct survey of all the fences and inclosures of said Warren Live Stock Co. lying southerly from Cheyenne, Wyo., and that my son, F. J. Mantey, accompanied them and pointed out said fences and inclosures and assisted in chaining the lengths of same, and from the information now given me as to the surveys made of such fences and inclosures so surveyed I believe the same to be correct and to show properly the fences of said Warren Live Stock Co. and the lands inclosed within same.

D. MANTEY.

Witnesses:
Mrs. D. MANTEY,
F. J. MANTEY.

Subscribed and sworn to before me this 27th day of August, A. D. 1906, at the ranch of D. Mantey, near Carr, Colo.

E. B. LINNEN,
Special Land Inspector.

STATE OF COLORADO, *County of Weld, ss:*

Francis Joseph Mantey, being first duly sworn, deposes and says: I am 25 years of age, residing on a ranch with my parents near Carr, in Weld County, in northern Colorado, where I have resided all of my life. Our ranch is entirely surrounded by the lands inclosed by the Warren Live Stock Co., which inclosures extend north to within 2 miles of the city of Cheyenne, Wyo., and south in Colorado for several miles and extends for miles both east and west.

I am well acquainted with the lands in this vicinity and with the fences and inclosures of the Warren Live Stock Co. and swear that in company with Inspector E. B. Linnen and Surveyor Charles Berry I assisted in making a survey of the inclosures of said Warren Live Stock Co. lying south of the city of Cheyenne, Wyo., in southern Wyoming and northern Colorado; that I pointed out the fences of said company and assisted in chaining around the fences, which we followed and chained completely around, and I certify that the fences surveyed are those of the said Warren Live Stock Co.

I further certify that said fences surveyed have been standing for many years, some as long ago as 18 years, and that other fences which inclosed public domain have been removed, so that there is not now so much land inclosed as was formerly.

I further certify that I am acquainted with the contents of the affidavit of my mother, Mrs. D. Mantey, given to Inspector E. B. Linnen, and know the same to be true.

FRANCIS JOSEPH MANTEY.

Witnesses:
C. P. BERRY,
E. E. HARRIMAN.

Subscribed and sworn to before me this 25th day of August, A. D. 1906, at the ranch of D. Mantey, near Carr, Colo.

E. B. LINNEN,
Special Land Inspector.

STATE OF WYOMING, *County of Laramie, ss:*

Elmer E. Harriman, being first duly sworn, deposes and says: My name is Elmer E. Harriman; I am 29 years of age; my residence is No. 1522 Snyder Street, Cheyenne, Wyo.

I was in the employ of the Warren Live Stock Co. for five years, from 1901 to 1905, inclusive, and during some of that period I rode the fences inclosing their pastures which lie southerly from the city of Cheyenne, Wyo., in southern Wyoming and northern Colorado. By riding around such fences and inclosures for said company to see that the said fences were standing and in good repair and mending same if cut or down I became well acquainted with said fences belonging to said company and the location of same and lands inclosed within same. This knowledge and information I so possessed as to such fences and inclosures belonging to the said Warren Live Stock Co. I imparted to Inspector E. B. Linnen, and being employed by him I personally accompanied him and Surveyor Charles Berry around each and all of the fences of the said Warren Live Stock Co., lying to the south of Cheyenne, Wyo., in southern Wyoming and northern Colorado, and assisting in chaining and measuring said fences, and I certify that the surveys so made of said fences and inclosures correctly show and represent same as owned and controlled by said Warren Live Stock Co. I further testify that during the period that I was in the employ of said War ren Live Stock Co., about the spring of 1903, I filed on lands in the vicinity of what is known as the Upper Duck Ranch, in southern Wyoming, for said Warren Live Stock Co. I filed on said lands, the description of which I do not now recollect, for said company, at the solicitation and request of one W. W. Gleason, general manager for said Warren Live Stock Co. I filed on a half section of land under the desert-land act, to hold the same for said Warren Live Stock Co., as per its general manager's request, and never received any compensation for same. When he, W. W. Gleason, general manager, asked me to file on said lands for said company I was in the office of said Warren Live Stock Co., in the city of Cheyenne, Wyo. He, the said Gleason, general manager for said company, had the filing papers for said lands all made out and I signed the same in said office at his request and for said company. When I signed said papers I was sworn to same by Teddy Voight, the bookkeeper for said Warren Live Stock Co., whom I believe was a notary public. I was sworn in the office of said Warren Live Stock Co. by its said bookkeeper. I did not know the lands so filed upon by me for said company. I did not go to the United States land office, in Cheyenne, Wyo., to file said papers and did not pay any fees or money on account of such filing I made to any person.

If the filing was placed of record in the Cheyenne, Wyo., land office and any fees paid to the receiver of said United States land office for the United States, the same must have been so filed and the moneys and fees paid by the said W. W. Gleason, general manager for the Warren Live Stock Co.

I know that other employees of the said Warren Live Stock Co. have filed upon and held lands for said company at its request through its said manager, W. W. Gleason. One of such employees of said company who filed upon and held Government lands for it is George Raynes, now in the employ of the said company. One Edward Hempstone also filed upon lands for said company. One William E. Shelton also filed upon lands for said company. Other employees have filed on lands for said company, made proof of same, and sold the lands at once to said Warren Live Stock Co. The names of some of such persons are as follows: George Richardson, James McGovern, and John Rider. None of these persons, I believe, ever resided on the lands they filed and proved up on or complied with the law.

I never saw the lands I filed upon to my knowledge.

I did not know just where it was and never made any attempt to comply with the law. I simply filed upon said lands, as herein stated, for said company, to hold the land for them, at the request of its general manager, W. W. Gleason.

ELMER E. HARRIMAN.

Subscribed and sworn to before me this 27th day of August, A. D. 1906.

E. B. LINNEN,
Special Land Inspector.

STATE OF WYOMING, *County of Laramie, ss:*

I, Alex Kirkbride, being first duly sworn, depose and say that I reside in T. 18 N., R. 65 W., Laramie County, Wyo., 31 miles north of Cheyenne, Wyo., where I have resided continuously for the past 18 years, being engaged in ranching. When I first settled here all of the country between my place and Cheyenne, except the Warren Pole Creek pasture and the Arbuckle pasture, was vacant and not fenced and was public range. About 15 or 16 years ago the Warren Live Stock Co. fenced the country from here to Pole Creek, lying to the south, and Anthony Wilkinson and his brother John fenced a large scope of country lying to the south and east. Other stockmen fenced the country until now it is practically all under fence. All of these inclosures so fenced and maintained by these stockmen contain Government land, and settlers have been hindered and prevented from locating within such inclosures. The few settlers who did locate within such inclosures have been harassed, fenced in, had no range for their stock or water, and everything has been done to make it uncomfortable for them and drive them out. There is at present no small settler between my place and Cheyenne, Wyo., such lands being all inclosed and controlled by the large outfits.

Barnet Kirkbride and J. J. McIlquham are two settlers who located on lands about 6 miles east from my place. They have been entirely fenced in by Anthony Wilkinson and can get no range or water in the immediate vicinity, and said Wilkinson, who maintains a large illegal inclosure, is using every means to drive and force said settlers out of his pasture.

The county road between my place and Cheyenne has been and is now fenced by the Warren Live Stock Co., and in going to Cheyenne I have to open two gates on this road.

ALEXANDER KIRKBRIDE.

Sworn to and subscribed before me this 29th day of August, 1906.

W. C. HINTZE,
Special Agent, General Land Office.

STATE OF WYOMING, *County of Laramie, ss:*

Van L. Gilford, being first duly sworn, deposes and says: My name is Van L. Gilford; 44 years of age; post-office address, Goldsmith, Wyo. I am a ranchman, and have lived in the northern part of Laramie County, Wyo., for the past 20 years. I am well acquainted with the country from here to the Colorado line. I know that the whole country, practically, from 30 miles north of Cheyenne, Wyo., to and south of the Colorado State line is fenced. I know that the Warren Live Stock Co. have fences in my vicinity, in T. 19 N., R. 66 W., Wyoming, and that they have lands fenced southerly clear to Colorado. The said Warren Live Stock Co. have on several occasions driven their bands of sheep to lands in my vicinity and have eaten out all of the feed, so that there was none left for my stock. I have known of their eating out several other stockmen.

On one occasion Senator Warren beat me out of a piece of land that I had script laid on. The land was in sec. 4, T. 18 N., R. 66 W., Wyoming. The script had been entered in the United States land office at Cheyenne, Wyo. Senator F. E. Warren told me he would get said land and beat me out of same if he had to go clear to the President with it. The script selection had not been approved in Washington, and I knew that W. A. Richards, the commissioner, was his friend and would do what he wished, and so, knowing that I would not get a square deal, I sold the script to him. There would have been more lands filed on and taken by settlers in this county if it had not been for the said Warren Live Stock Co. and other big cattlemen and their attitude toward settlers whom they did not want to settle and locate on lands within their fences and pastures.

The fences of the Warren Live Stock Co. and other big stockmen in this vicinity have been built now for 5 years, and some of the southern pastures of said Warren Live Stock Co. have been fenced for the past 20 years. I have marked on a township plat for you the lines of the fences of said Warren Live Stock Co. in this vicinity, north of my ranch.

VAN L. GILFORD.

Subscribed and sworn to before me this 29th day of August, A. D. 1906, at the ranch of Van. L. Gilford, in T. 19 N., R. 66 W., Wyoming.

E. B. LINNEN,
Special Land Inspector.

Witness:
W. C. HINTZE.

STATE OF WYOMING, *County of Laramie, ss:*

Van L. Gilford, being first duly sworn, deposes and says: That some time during the year 1902 I went to the United States land office at Cheyenne, Wyo., and made a script filing for lands in either sec. 1 or 2, T. 18 N., R. 66 W., Wyoming, such lands consisting of a 40-acre tract partially inclosed by the Warren Live Stock Co., within their illegal inclosure. On the date when I made this filing the tract book and plat of said township showed such tract to be vacant public domain, and such script filing was accepted by the land officers at Cheyenne, Wyo. Some 60 days later I received a notice from the Cheyenne land office, to the effect that the tract had been formerly entered by W. W. Gleason, general manager of the Warren Live Stock Co., with script. I thereafter went to said land office to investigate same, and said officials showed me a press copy-book page which they said contained a press copy of Gleason's filing, which they had neglected to place upon the tract book and plat in said land office. I was satisfied then, and am now, that this was but a flimsy excuse to beat me out of the land, as Senator Warren had done on a former tract, and I believe said land officers were in collusion with said Warren Live Stock Co., through its general manager, W. W. Gleason, aiding and assisting said company to beat me out of said tract of land.

I did not appeal to the General Land Office or report said case, for the reason that I believed that I could not get justice, knowing as I do that the commissioner, W. A. Richards, will do the bidding and what is requested of him by Senator Francis E. Warren.

VAN L. GILFORD.

Sworn to and subscribed before me this 29th day of August, 1906.

W. C. HINTZE,
Special Agent, General Land Office.

Witness:
E. B. LINNEN.

STATE OF WYOMING, *County of Laramie, ss:*

Horace E. Adams, being first duly sworn, deposes and says: My name is Horace E. Adams; my post-office address is Meckla, Wyo.; may age is 46 years; I am at present the postmaster at Heckla, Wyo.; I have resided here for the past 21 years; my occupation is that of miner and assayer.

Mrs. Mary Gilchrist, who resides at Cheyenne, Wyo., during the present year, 1906, made entry and final proof on the N. ½ of the S. ½ of sec. 18, T. 14 N., R. 69 W., Wyoming, as a timber and stone claim. Said land has no timber on some and no stone suitable for building purposes, and is agricultural land, and has been used by said claimant for ranch purposes for the past 20 years, same having during such period been inclosed by a wire fence. Mrs. Gilchrist's husband, now deceased, once had a filing on this same tract of land as a timber-culture entry. This same lady also has a homestead filing on sec. 8, T. 14 N., R. 69 W., nearly adjoining her T. & S. entry, which is the identical same character of land. She filed on same about three years ago, but has never resided on said homestead, but makes her permanent home at Cheyenne, Wyo. The whole of said section 8, together with practically all of section 18 and other Government lands, are inclosed illegally by a barbed-wire fence, owned and maintained by Mrs. Gilchrist and the Gilchrist estate, of which one Timothy Burke, United States district attorney for Wyoming, located at Cheyenne, Wyo., is the administrator and attorney for said Mrs. Gilchrist. The evidence sworn to by Mrs. Mary Gilchrist in the proof on the said T. & S. entry was false and is perjury in many particulars. I protested said entry and proof of said T. & S. claim of Mrs. Mary Gilchrist on the ground of its being agricultural and not timber or stone land, and met with the opposition of United States Attorney Timothy Burke, as attorney for Mrs. Gilchrist, who, among other things, called me to one side and said to me: "Mrs. Gilchrist has paid $2.50 per acre for said land. That is all the land is worth, and it can't be fraud against the Government to pay for it all the land is worth." My attorney, D. W. Elliott, Cheyenne, Wyo., heard said conversation.

Mr. Homer C. Roberts, of Granite Canyon, Wyo., has sec. 12, T. 13 N., R. 70 W., Wyoming, illegally fenced; also one-half of sec. 8, T. 13 N., R. 69 W.

Mr. T. D. Holt, Hecla, Wyo., has sec. 6, T. 13 N., R. 69 W., Wyoming, and other Government lands illegally inclosed.

Mrs. Martha Ferguson and sons, Hecla, Wyo., have secs. 24, 14, portions of secs. 34, 28, in T. 14 N., R. 70 W., Wyoming, illegally inclosed by a wire fence; also secs. 13, 25, 15, 35, and 23, mineral lands, and sec. 1, T. 13 N., R. 70 W., also illegally fenced.

Mr. Van Tassel, Cheyenne, Wyo., has a large ranch northwest of Hecla with many sections of Government lands inclosed.

Mr. Thomas McGee, Jesse Cole, and Hersig Bros. control a majority of the land and pastures lying between Hecla and Cheyenne and have large tracts of Government lands illegally inclosed by fences.

The Warren Live Stock Co., of which Senator Warren is principal owner, I understand, have fenced large tracts of Government lands lying south, west, and east of Cheyenne, Wyo., portions of which I know. I believe same to extend from Granite Canyon to and south of the Colorado line and east to the west boundary of Nebraska.

HORACE E. ADAMS.

Subscribed and sworn to before me this 14th day of August, A. D. 1906.

E. B. LINNEN,
Special Land Inspector.

We, the undersigned, each for himself and not one for the other, have read the above and foregoing affidavit of Horace E. Adams, and are well acquainted with the facts therein set forth and know the same to be true, and subscribe our names hereto as being also our statement of facts.

H. S. HALL.
MRS. W. A. SIMMONS.
JOHN L. MORGAN.

STATE OF WYOMING, *County of Laramie, ss:*

D. W. Elliott, being first duly sworn, deposes and says: My name is D. W. Elliott. I am an attorney and for several years last past have practiced before the United States land office at Cheyenne, Wyo. During such period and practice I have met with the opposition of the Warren Live Stock Co., the Gilchrist estate, Albert W. Bristol, Albert H. Pierson, ranchmen, all of whom have Government lands illegally fenced.

These companies and persons and their employees and agents have on numerous occasions used threats, violence, and force and intimidated settlers, or those who would have become bona fide settlers, preventing them from settling upon the lands they had filed upon which were included and embraced within their fences and illegal inclosure, which embraced their lands and other lands which were a portion of the public domain.

One of the persons thus intimidated by the Warren Live Stock Co. and its agents was Elizabeth Thomas. Another was James E. Smith, both of Cheyenne, Wyo. I conducted their cases. Also, Mrs. Elizabeth McKeever, of Cheyenne. I have also heard of a number of other persons who told me of same. These annoyances by said company and its agents consisted of the tearing down of the entrymen's fences, breaking of windows, turning in cattle to eat up their crops, carrying away their well buckets, and in one case setting fire to a house. Everything was done to prevent the settler from living upon the land and raising a crop.

In the case of Albert W. Bristol, one Savala Swaney filed on lands within his unlawful inclosure on October 4, 1905, H. E. No. 5820, Cheyenne series. Said Swaney attempted to fence said land and hauled material for the fence. Said Bristol's employees appeared, and by threats and intimidation drove him off the land. They cut down his fence, broke his stove, drove him away from the land, and kept him off the land by threats for a period of over six months, and said employee of said Bristol, who drove him off, one Oscar Brittain, who is foreman for said Albert W. Bristol, then filed a contest against said Swaney's entry. At the hearing in the local office the decision was against said entryman, Swaney.

This land is embraced, with other Government lands, within the unlawful inclosure of said Bristol and has been so illegally fenced for the past 20 years.

The agents of the Gilchrist estate, of which United States Attorney Timothy F. Burke is its administrator and attorney, have, by threats, violence, and intimidation and force, prevented at least three persons that I know of from settling upon and cultivating lands located within the unlawful inclosure and fence which has been inclosing Government lands for the past 20 years. One of such settlers attempted to make an entry of the N. ½ of the S. ½ of sec. 18, T. 14 N., R. 69 W., thus illegally fenced. Thereafter Mrs. Mary Gilchrist made T. & S. entry and proof on said land, which I am advised is agricultural and grazing land and devoid of any timber or any stone, other than conglomerate rocks of no value whatever. I acted as attorney for Horace E. Adams, who protested said proof, and I overheard Mrs. Gilchrist's attorney, United States Attorney T. F. Burke, say to Adams: "Mrs. Gilchrist can not commit a fraud on the Government by proving up on said land. She paid $2.50 per acre for said land, and that is all that it is worth, and so she can not commit any fraud on the Government by proving it up."

He, Burke, and Mrs. Gilchrist, his client, can not but know of the illegal fencing of Government lands by the Gilchrist estate, which has been unlawfully fenced for the past 20 years, and, I am informed, they collect and receive a yearly rental of $1,000 per annum from lands leased, most of which or a portion of which is Government lands. Mrs. Gilchrist and her attorney, Burke, well knew that she was committing a fraud on the Government and perjury in making proof on said timber and stone claim, which had formerly been entered in the United States land office by her husband, Mr. Gilchrist, as a timber-culture claim.

Albert H. Pierson purchased a ranch some years ago which embraced Government lands which were illegally fenced. He and his agents attempted to prevent one John F. McComsey, a settler, from entering upon lands he had filed upon in his, Pierson's, pasture. He, Pierson, personally threatened said McComsey and filed a contest against said entry and later made application to enter said land under the timber and stone act and said he would spend $5,000 to defeat the entry of said McComsey. He, Pierson, has also made threats against one H. S. Preston, who has also filed upon lands adjoining the lands of said McComsey, inside of said Pierson's illegal inclosure.

Generally speaking, most all of the lands in the vicinity of Cheyenne, Wyo., are fenced and most all ranches so fenced contain Government lands. This is known to the people generally and it is a source of comment why the special agents that have been stationed here did not have said illegal fences removed from the public domain and honest, bona fide settlers allowed to enter said lands, which would be done and such lands eagerly sought for if the fences were removed and they could live on same peaceably and not be molested and fought off by the fence owners and their employees.

One of the largest owners of fences inclosing the Government lands illegally is the Warren Live Stock Co., of which Senator Francis E. Warren is a large owner. Hersig Bros. (Charles and Fred) are large owners of illegal fences which inclose Government lands. The Swan Land & Cattle Co. also maintain large unlawful inclosures. Mr. Cole has some illegal fences. Also others. Most of the lands are close to Cheyenne, so fenced. Some are out 60 or 75 miles. Most of these fences unlawfully inclosing Government lands have been maintained for many, 20 or more, years.

D. W. Elliott.

Subscribed and sworn to before me this 17th day of August, A. D. 1906, at Cheyenne, Wyo.

E. B. Linnen,
Special Land Inspectors, Department of the Interior.

Witnesses—
W. C. Hintze,
Alice J. Hintze.

State of Wyoming, *County of Laramie, ss:*

D. W. Elliott, being first duly sworn, deposes and says:

My name is D. W. Elliott. I am an attorney practicing before the United States land office in Cheyenne, Wyo., and have been for several years past. Frequently I have to hunt around in the city of Cheyenne, Wyo., to find one or the other officer of the United States land office to swear my clients who transact business before said office. Some times I have consumed as much as an hour's time in finding one of said officers. At times when I would locate and find Col. Slack, the receiver, he would come to my office and swear my client.

The receiver is owner of the Cheyenne Daily Leader, published in this city. The register, W. E. Chaplin, is the owner of the Laramie Republican, which paper he edits. He goes to Laramie, Wyo., every Saturday, leaving the land office at about 10.30 a. m. and returning in the afternoon of the following Monday each time.

On August 15, 1906, during the frontier carnival, I went to the land office, in the city of Cheyenne, Wyo., and found no one present except one lady clerk, Miss Mabel Hayford, and no one to swear my client. I went to said office about 2 o'clock p. m. and again about 4 o'clock p. m. and found no one there but the clerk, Mabel Hayford, and she said she presumed the officers and balance of the force were out at the carnival grounds.

Again on August 16, 1906, I went to said land office about 10.30 a. m. and found only Miss Winnie Woods, clerk, at said office. She said Mr. Chaplin had been in the office for a few minutes after 9 o'clock. I had a client along and told him he would have to wait over until to-morrow to transact his land-office business. I have on some occasions gone to the home of the receiver, in Cheyenne, during office hours with a client, and Receiver E. A. Slack would swear them at his home.

(Signed) D. W. Elliott.

Signed and sworn to before me this 16th day of August, A. D. 1906, in the city of Cheyenne, Wyo.

E. B. Linnen,
Special Land Inspector, Department of the Interior.

State of Wyoming, *County of Laramie, ss:*

I, Edward B. Linnen, special land inspector, being first duly sworn, depose and say:

That on August 14, 1906, in company with one Horace E. Adams, postmaster of Heckla, Wyo., I made a personal inspection and examination of the N. ½ of the S. ½ of sec. 18, T. 14 N., R. 69 W., Wyoming, same being the timber and stone entry of Mrs. Mary Gilchrist, who made final proof on same in the Cheyenne land office during the present year. Said tract of land is absolutely devoid of any timber of any character whatever; the same is agricultural and grazing land comprised of valley and table-lands, along the rim of the valley conglomerate rocks are scattered in patches. These conglomerate rocks are absolutely worthless, and said land is absolutely devoid of any stone fit for building purposes or of any merchantable value. This claim was taken a 40 wide and a mile long to cover the valley lying between small hills on either side on which are situate patches of conglomerate rocks scattered along the rim of the valley at different points. There is at least 35 acres of agricultural land in said valley which can be farmed, a portion of which is meadow land irrigated by springs. There is a dry creek traversing the valley which undoubtedly carries considerable water in the springtime and during heavy rains. Some of the land is natural meadow land irrigated by springs, and from 35 to 55 acres of said tract is good tillable land, and the balance of said tract is good average pasture land.

Said tract being absolutely devoid of any timber or stone other than conglomerate rocks, the same was not honestly taken or proved up on by the claimant as a timber and stone claim, but is taken solely for grazing and agricultural purposes. This tract nearly adjoins the claimant's homestead which, though filed upon some three years ago, has never been lived upon or the homestead law in any manner complied with, the claimant residing in Cheyenne, Wyo. This timber and stone proof is false and fraudulent. This land, with other lands and Government land, is inclosed within a barbed wire fence owned and maintained by Mrs. Gilchrist and the Gilchrist estate, for whom, I understand, Mr. Timothy F. Burke, United States attorney for Wyoming, is attorney and administrator. Said unlawful inclosure, embracing these lands and Government lands in said vicinity, has been maintained by this claimant, I am informed, for some 15 or 20 years, and that the claimant is now receiving a yearly rental from such pasture which incloses Government land, her business being transacted by her attorney, Burke, who can not but have knowledge of these facts.

E. B. Linnen,
Special Land Inspector, Department of the Interior.

Subscribed and sworn to before me this 17th day of August, 1906.

W. C. Hintze,
Special Agent, General Land Office.

ADDENDA.

Said land taken by Mrs. Gilchrist and proven up on as a timber and stone claim was formerly entered by her husband, now deceased, as a timber-culture claim. There are still evidences of the plowing he did or had done of several acres on the west 40 acres of said tract. Same adjoins a natural meadow on said land which is kept moist and irrigated from springs. Pencil sketch plat of lands herewith attached.

E. B. Linnen,
Special Land Inspector.

That on October 5, 1906, Senator Warren, hearing of the activity of the Department of the Interior in connection with the alleged irregularities, and of the presence of Inspector Linnen in Wyoming and Colorado just previously, and on learning of the purport of his visit, wrote the President as follows:

UNITED STATES SENATE,
COMMITTEE ON MILITARY AFFAIRS,
Washington, October 5, 1906.

DEAR MR. PRESIDENT: Simultaneously or nearly so with the publication through the Associated Press of an authorized statement from the Secretary of the Interior made by the newspapers to reflect most severely upon me, I heard of the presence in the northwestern part of the State of Wyoming of two men who claimed to represent the Secretary of the Interior direct and who were in search of parties who would make affidavits against the Commissioner of the General Land Office, W. A. Richards, with reference to some land entry or entries he had made a score or so years ago. They were traveling under assumed names, or at least one was who, in some places, passed as a Mr. Davis and others as a Mr. Bangs. A little later they were in another inland county in the State. From there came the word that they were "after" Commissioner Richards; that they claimed to have evidence sufficient to "land him," as they expressed it, on account of coal cases they alleged he had decided.

Their averment was that Mr. Richards would not be permitted to resign, but would be in the penitentiary before many moons. And they stated they would attend to the case of Senator Warren; that when they were through with Warren he (Warren) would not be a candidate, would not even permit the use of his name in connection with the office of United States Senator for the term commencing March 4, 1907, when confronted with the result of their (the special agents') work. A little later these two men, accompanied by surveyors, stenographers, clerks, et al, appeared in Cheyenne and engaged private rooms in a residence. Among the first men they invited to their quarters was the chairman of the Democratic county committee of that county and, on the same day, the secretary of the same committee. After the interview the secretary introduced one of the party under an assumed name to neighbors of mine, who, in turn, were invited to call and see Mr. Bangs. Mr. Bangs communicated the information that he was "after" Warren and his fences; that he had hired former employees (one discharged for suspected theft) of the Warren Live Stock Co.; that he had heard of certain enemies of that company whom he would interview and as he understood his hearers had had difficulties with the Warren Live Stock Co., he would interview and employ if he could, to develop the information he sought. One of the surveyors and affidavit men employed, is one of the owners of the leading Democratic newspaper of the State.

The interviews above mentioned with the Democratic committeemen and the employment of Democratic newspaper men may have been only a coincidence.

In later interviews Mr. Bangs said that a special prosecutor would be employed to take the place of the regular United States attorney in fence cases with the Wyoming courts, especially in the case of Senator Warren, and that he should commence suit very soon, but was not certain whether it would be in Wyoming or Colorado. I understood Mr. Bangs claimed, on his first arrival in Cheyenne, that he represented the Treasury Department, later the Secretary of the Interior, and still later the Geological Survey Bureau. He introduced himself as a Mason to Masons and solicited confidences thereupon. He introduced himself to a clerk and surveyor in the employ of a neighboring live stock and land corporation as being a representative of the Geological Survey; that he was a Mason, as was the surveyor; that the surveyor's employer had authorized him (Bangs) to come to that office and obtain a map of the corporation lands on account of some proposed irrigation work, and, under these false pretences, he did obtain a blue-print map. Later on Mr. Bangs conveyed the information to those whom he sought to obtain affidavits from, that he was working under an assumed name; that he was the man who obtained the conviction of Senator Mitchell; that he was the man who secured the conviction of Senator Burton, and that he would soon have Senator Warren where he had placed the other Senators, and, upon leaving, gave out the word that he was going to Colorado to commence suit in the United States court against Warren where it would be easier to obtain quick work from the grand jury, etc. Maps were shown by Bangs purporting to be of the Warren Live Stock Co.'s fences upon which affidavits were to be based, which maps, as described to me, were incorrect both as to existing fences and the ownership of same.

The Mr. Bangs above mentioned is understood to be a Mr. Linnen, special land inspector for the Secretary of the Interior; the other a Mr. Heinze, a land inspector of the General Land Office, of late detailed to the Secretary's office. The false representations made by these men were numerous and grotesque, not only as to their own identity, but as to circumstances and facts. Mr. Linnen, after arriving in Denver. Colo., denied that he had been in Wyoming. Mr. Heinze was heard from later in Douglas, Wyo., when he said, "We have got Warren and we are going to land him."

Mr. President, I assume that time enough has now elapsed for returns to be in from these men, and my object in writing you is that, for my protection, for the honor and credit of your administration, and that all parties may have even justice, you will kindly request that no further Associated Press statements reflecting upon me may be given out by the Secretary of the Interior until I have had an opportunity to either first review and reply to allegations made against me or that some unprejudiced and honorable man or men may take up any report that may be made and examine into the truth or falsity of the report and into my conduct as to these fence matters or others and before further streams of dirty water are turned upon me.

I want to observe, in conclusion, that I can see no good purpose to be served by this sleuth-hound mode of procedure in the examination and abatement of fences upon the public domain. Fences and lands are facts; realities that can can not flit away or hide. They can be found as well in daylight as in darkness; no one knows more about them than the owners thereof, and it seems to me that an open, straightforward, honorable pursuit of fences and those that maintain them can be made in the open. Agents can ask for the owners' maps, descriptions, and testimony and upon that proceed with the testimony of others to substantiate or disprove and obtain better results at only a fraction of the cost of this assassinating, dark-lantern procedure now being indulged in by Messrs. Linnen and Heintze.

I repeat these names as they are given to me, though I do not personally know either one. I have never, to my knowledge, seen the latter, and have had only one glance at the former.

I am aware that all of the above may be termed "hearsay," but I have not felt that I could, at this time, with dignity and discretion, proceed to the procurement of documents and affidavits regarding the same, since I could allow only reputable, discreet friends of mine to discuss the matter with me. The statements, however, have dovetailed together sufficiently with known facts to compel me to believe absolutely that the above narraive is subsantially a correct partial memorandum of some of the doings of the two men mentioned.

REGARDING WARREN CO. FENCES.

To the best of my knowledge and belief I do not personally own a foot of illegal fence.

I hold stock in a live stock company, and I have been interested directly and indirectly in live stock since the first introduction of the industry in what is now Wyoming.

Many years ago, and long before there was any law against fencing the public domain, we leased of the Union Pacific Railroad a large—in fact two large tracts within the Union Pacific Railroad land-grant limits. We fenced a portion of this railroad land—the fence standing upon the railroad sections—and necessarily including therewith the even or Government sections, or such portions of them as were yet unappropriated, but leaving, however, outside of our fences as much railroad land upon which we paid rent as we had included of Government land within our inclosures, leaving gates on roads and trails and always admitting and even inviting settlers.

Later on the United States fence law was passed. I felt that under the law we had some rights within the railroad limits, and so continued the existence of these fences. During Mr. Cleveland's administration, after there had been two special agents provided by law for the Secretary of the Interior, one of these agents, a Mr. Bowers (afterwards assistant comptroller), visited Wyoming. At that time I was governor of the Territory by the appointment of President Arthur but holding office under Mr. Cleveland. I immediately sought Mr. Bowers, stating to him that we were both serving under the same administration and under our oaths of office that I felt he should first turn his attention to my case, giving him my views as to our rights in the railroad limits, and stating that I should, until some adjudication was had, attempt to maintain our fences as they then existed, but that I could not hold an office under the administration if its views and mine were found to clash. I suggested that an agreed case be made up and submitted to the court. Mr. Bowers first looked over the fences of the Warren corporation and later on others similarly situated, and finally, after several months spent in the removal of fences outside the railroad limits—but ordering none down within—an agreed case was made up concerning a fence in Albany County and was tried before the court and the court found for the defendant. The Government took an appeal to the supreme court of the Territory; that court sustained the lower court (all of the judges being appointees of Mr. Cleveland). The Government again appealed, this time to the Supreme Court of the United States, but never passed this case before that tribunal. After that the fences within the railroad limits remained.

Years after this another suit was brought in the United States courts of Colorado regarding a fence case within railroad limits, and the court found against the defendant. This was carried up all the way to the Supreme Court of the United States, and finally there decided by an opinion of Mr. Justice Brown that such fences were illegal under the law, notwithstanding the checkerboard condition of ownership.

Following this decision the Warren Co. has torn down many miles of fencing and has undertaken to conform to the law. During these years many sales and purchases of lands were made and some of that bought had fences thereon differing from those above described. These have been, from time to time, removed. The company, by selling and buying lands, by renting school and other lands of the States, and by changing, trading, and consolidating, has undertaken to get its own land in solid bodies where under fence, leaving much of its full-titled land, upon which it has made costly improvements and paid annual taxes, outside of its inclosures.

The company believes that its present condition is entirely within the law. It is the company's desire to be strictly within the law, and if not already within as to any particular, it stands ready to fully comply therewith.

If a statement and maps were erroneously made up and presented by officers of the Government to the grand jury of the State of Colorado, where no counter testimony could be given, an indictment might be had where a conviction could not follow. The notoriety through newspaper dispatches and otherwise attaching to the indictment of a United States Senator reaches far and wide and, although it may not injure his standing in his own State, it is an unpleasant advertisement in the State of his birth and early environment, while the complete refutation of the charges and honorable acquittal never become equally notorious, and to the Messrs. Bangs, Davis, et al., the failure of suit is a matter of no consequence. Their pay goes on, and as it is scalps they are after instead of the removal of fences, and as they seem to be credited with as many points for indictments as if for convictions, the odds are in no wise even between the Senator and the alleged sleuth. There is a great deal more I would like to say, but your time and patience forbid.

Very respectfully, F. E. WARREN.

The PRESIDENT,
White House.

That on October 6, 1906, and October 27, 1906, the President wrote Secretary Hitchcock as follows:

THE WHITE HOUSE,
Washington, October 6, 1906.

MY DEAR MR. SECRETARY: I inclose a letter from Senator Warren of October 5, in which he speaks of alleged proceedings against him and against the Commissioner of the General Land Office, in the matter of illegal fencing or land frauds in Wyoming. I presume that this is the matter to which you referred in your letter written to me some days ago, in which you stated that you would have to report to me about frauds in Wyoming which go very high up. My one object is to have any investigation into any alleged misconduct there fair and impartial, and I care not a rap whether the man hit be Democrat or Republican, Senator or private citizen. It is necessary on every account, however, that no publication of these facts should be made until they are submitted to me, and if they are serious, not until they have been submitted by me to the Attorney General, and in view of the publications that have appeared in the past from the Interior Department I desire you to take particular pains to see that not an allusion of any kind is allowed to get out as to this case until it has been laid before me, and until I authorize whatever action is taken.

Sincerely, yours,

THEODORE ROOSEVELT.

Hon. E. A. HITCHCOCK,
Secretary of the Interior.

OCTOBER 27, 1906.

MY DEAR MR. SECRETARY: I have received from Senator Warren a letter dated October 5, which I inclose, together with a copy of his proposed amendment to the joint-statehood bill and a typewritten comment thereon; and, furthermore, the eight-page copy of a statement admitted to have been issued on August 15 by the Interior Department in connection with this amendment and newspaper clippings commenting thereon.

Verbally, the statement is also made that there is a "bureau of publicity" run in connection with the Interior Department not merely with the purpose of furnishing the newspapers with facts to the credit of you and of the department, but also to furnish them with facts to the discredit of other officials of the Government. You doubtless remember the publication last spring of an entirely unwarranted attack on the Department of Justice in connection with the Oklahoma and Indian Territory affairs, the allegations being without base, in fact. The Associated Press people then told me that they had been furnished the statement by the Interior Department, making certain allegations in reference thereto which I was reluctant to go into because of the entanglement that might ensue (the statement being that you had personally given the information); and as Mr. Moody, on behalf of the Department of Justice, stated that he was willing to have the matter rest where it was so as to avoid causing trouble with a fellow member of the Cabinet, I decided to do nothing further. I have also, as you know, taken no action in the matter of the unwarranted publication, without authorization from me, of Gov. Higgins's letter to me and of your letter to me in answer thereto, though there is additional matter in connection therewith as to which I shall later in this letter submit a question. But in this instance, as the attack is made upon a United States Senator and inasmuch as no facts have yet been produced to justify the attack, while the manner of making the attack certainly can not be justified at all, I feel that I must ask for an explanation.

It appears that the amendment in question was introduced by Senator Warren at the request of a constituent of his, a Wyoming man, who had an interest in Oklahoma. It further appears that the amendment proposed to do for Oklahoma practically just what had been done in enabling acts for the Territories admitted as States under similar bills during the last few years—Idaho and Wyoming, for instance—and substantially what was provided in the same bill as regards Arizona. Unless some statement to the contrary is presented, there would therefore appear to have been nothing unusual in the amendment in question, and it would seem on its face (unless testimony to the contrary is produced), so far as Senator Warren is concerned, that his action was natural, and that no improper motives can be ascribed to him, although the special circumstances in the case made me feel at the time, and feel now, that it was, as a question of policy, inexpedient to adopt his amendment. It further appears that there was nothing furtive done in connection with this amendment; that it was openly introduced on February 26 by Senator Warren, was referred to the Committee on Territories, and ordered to be printed. The Committee on Territories was then holding daily sessions, and the Senator has reason to suppose that the amendment was given due and usual consideration by the committee, and he also supposes, whether rightly or wrongly I do not know, that it was sent to the Interior Department for report. Eleven days afterwards, on March 9, when the statehood bill was under consideration, he again offered the amendment referred to. Senator Beveridge, on behalf of the committee, stated that the committee would accept it, and it was agreed to by the Senate. Shortly afterwards I was informed by several people that the amendment in question was objectionable to Oklahoma, among these people being both Gov. Frantz, of Oklahoma, and you yourself. It appears that the bill passed the Senate with the amendment in; that then Gov. Frantz and representatives of the Interior Department, including, I believe, you personally, appeared before the conference committee objecting to the amendment, I having told both Gov. Frantz and yourself that on the information given me I sympathized with the objection. It is stated, furthermore, that at none of these hearings was any assertion made that the presentation of this type of amendment to such an enabling act was unusual, or that any question of the Senator's honesty, or, indeed, any other question but a matter of public interest and public policy was at stake. The Senator further asserts that he asked you if you knew the constituent for whom he acted—Mr. Walker—and that you responded that you did know Mr. Walker, and that he was a good and reliable man of honorable character, and that the same was true of Mr. Walker's attorney in Washington. Senator Warren further states that his interest in the matter was impersonal; that he did not appear in behalf of the amendment at any of the hearings, leaving the entire matter to the judgment of the committee, feeling that he had done enough in submitting the amendment. A substitute amendment was finally adopted.

The publication by the Interior Department, which I inclose, appeared on or about August 15. It is peculiarly drawn up. In form, to those who are not acquainted with the circumstances, it would seem not to be prepared in the Interior Department but by some disinterested person. It contains a very strong eulogy of you and grave reflections, by implication at least, on Senator Warren. It opens by saying:

"Facts have just come to light showing that there was a very bitter fight during the closing days of the last session of Congress over a provision of the statehood bill which has received little public attention. As a result of this fight, which was conducted by the Secretary of the Interior on one side and a number of attorneys representing an organized band of land speculators on the other, the new State of Oklahoma will be the recipient of school lands containing oil and other minerals which are estimated to be worth between one and two million dollars."

It continues that—

"Early in March, however, Secretary Hitchcock learned that an amendment had been slipped into the statehood bill in the Senate (known as the Warren amendment). * * * The Secretary, on looking into the matter, reached the conclusions that the claims of the parties who would benefit by the amendment were entirely without merit and that the whole scheme bore some resemblance to a raid upon the Treasury."

The above quotations, of course, convey the most offensive implication as regards Senator Warren and as regards the people engaged in pressing the amendment. As the amendment had been defeated and the whole matter closed months before, I do not see what object there was at this time in using such language or making such a report about it. Moreover, the expression "slipped into" necessarily conveys the idea that Senator Warren was acting furtively. So far as appears from any facts before me, he acted with entire openness and in the usual fashion in which all those who were introducing amendments to the bill were at that very time acting.

The published memorandum then continues, describing your activity in opposing the amendment and the widespread indignation about it in Oklahoma, which, says the memorandum, "found vent in numerous letters, telegrams, and petitions to Secretary Hitchcock, to whom everybody seemed to look as the man who should lead the fight against the measure. Some of the letters were models of invective, and all seemed to be impregnated with caloric. The writers were evidently convinced that a big 'job' was being worked against the Territory, and they did not hesitate to put their opinions into plain language, the terms 'graft' and 'grafters' being mild as compared to some that were used."

The memorandum goes on to say that the department continued its fight against the amendment. It then says: "If Secretary Hitchcock thought the fight was won, however, he was mistaken, for the activity of the attorneys for the speculators increased every day."

This form is worthy of comment if, as alleged, the publication was submitted to and approved by you before it was issued.

The memorandum goes on to describe your personal efforts to beat the bill, no mention being made, for instance, of the fact that Gov. Frantz, of Oklahoma, among others, was taking a strong part against the bill. The memorandum sets forth your services at length. Toward the end it says:

"When the people of Oklahoma were celebrating the passage of the statehood bill it is probable that they did not know how near the new Commonwealth came to losing some of its most valuable possessions, besides having a blot on its escutcheon, from having been made the victim of unscrupulous speculators upon its first entrance into the Union of States."

Let me repeat that from information given me by you or obtained by me through Gov. Frantz and others, I was against the adoption of the amendment. If those pushing it were unscrupulous speculators, were guilty of jobbing, grafting, or the like, then it would have been or was eminently proper to show this to be true before the committee at the time. I do not as yet understand what was the need of bringing up the matter afterwards when it was all past history, and the only object of the publication would seem to be to secure public credit for certain individuals and discredit for others. Of course, if any man had acted badly he should have been shown up, but I do not understand why he was not shown up at the time, and why, if not then shown up, the attack should afterwards have been made upon him anonymously. At the time of the hearing before the committee, and not later, was the time to attack Senator Warren, if he was to be attacked at all.

Assistant Secretary Ryan tells me that the memorandum in question was prepared by Mr. Acker, a clerk in the Interior Department; that it was submitted to Mr. Ryan, who forwarded it to you to find out if you approved of its form and desired to have it published; and that you returned it with your approval, after having, however, struck out a commendatory allusion which it contained to the action of Gov. Frantz, of Oklahoma, in opposing the amendment.

I call your attention to the inclosed clippings from such papers as the Providence Journal, the Denver News, the Erie Herald, and the Vincennes Sun. These are of importance because certain officials of the Interior Department, as I understand, have alleged that the published statement did not really contain an attack on Senator Warren. It will be seen, however, that all the papers treated it as a personal attack by you on Senator Warren. The Denver News says that you "roast" Senator Warren; that you have characterized his amendment as a deliberate steal; that the amendment was urged by an organized band of land speculators, resembled a raid on the Treasury, etc. The Providence Journal says:

"Another striking demonstration of the courage of the Secretary of the Interior—a courage most unusual in a public official dealing with the weaknesses of influential members of his own political party—is afforded by his ungloved attack upon Senator Francis E. Warren, of Wyoming. Without mincing words * * * and in plain English he names Senator Warren as the power behind the throne, the conspicuous counsel, friend, associate, and, inferentially, beneficiary of the 'combine' of 'looters' and 'grafters.' * * * Senator Warren may be innocent, but the case as it stands officially made up and publicly indorsed by Secretary Hitchcock looks bad for him, and seems to require at least a defense. He is a conspicuous target for a member of the Cabinet to shoot at."

These quotations show that the publication in question was construed—and I am bound to say that I think it could only have been construed—as a deliberate attack upon Senator Warren for having in this matter of the amendment acted in the interest of grafters who were trying to loot the Treasury, and as having made the effort in their behalf in furtive fashion. Whether Senator Warren has been guilty of any misconduct in any other matters has nothing to do with that which I touch upon in this letter. I would like to know whether you intended to convey the impression about Senator Warren which the Providence Journal, the Denver News, and so forth, quoted you as conveying; and if they misrepresented your attitude I would like to know whether you ever made any statement to correct the impression, and if not, why such a statement was not immediately made. It seems to me clear that the published statement does contain a very severe attack on the Senator, and that it was due him either to give proof of its accuracy or immediately to explain that it was misleading and that no attack was intended. If Senator Warren has been guilty in this matter, then let his guilt be shown; but not by innuendo and not in such fashion as that which has been adopted.

I further call your attention to another publication in the New York Herald under date of August 19. This looks as if it were inspired from the same sources as the memorandum to which I have been making reference, which is the reason why I speak of it. I especially call your attention to the closing lines, which state that there are even greater surprises in store than those to which the Secretary (that is, you) have treated the public this fall. This is apparently a reference to the investigations you have been making in Wyoming, of which you have since told me; in the West it has been so accepted; and it ought not to be necessary to say that until the matter is submitted to me no hint of it should be allowed to escape. It is eminently proper that the Department of the Interior should receive full credit for its work, but it is not proper that, as in this article, it should be said that it was you, the Secretary of the Interior, who "instituted" and "ordered" the prosecutions against Senator Mitchell and two Representatives in Congress from Oregon, "all of [your] own political party, and among the most prominent people in the State," as the article is careful to allege. As a matter of fact, while the officials under you did their full duty and were instrumental in securing testimony against Senator Mitchell and the two Congressman, their part was exactly the same as that played by the post-office authorities in the case of Senator Burton. You stood in the one case precisely as the Postmaster General stood in the other; or indeed, to be accurate, in the case of Senator Mitchell and the Oregon Congressmen the Department of Justice is entitled to an even larger share of the credit as compared with the Interior Department than it is in the case of Burton as compared with the Post Office Department. The vital matter in the Oregon prosecution was the appointment by Mr. Knox, then Attorney General, of Mr. Heney to prosecute the cases. It was Mr. Heney, of the Department of Justice, who carried these cases through, and on whose recommendations I consistently acted, and he was specially chosen for the work by Mr. Knox. Of course, he received loyal and invaluable aid from the officials of your department, just as under similar circumstances the officials of the Department of Justice received loyal and invaluable aid from the officials of the Post Office Department. I should most emphatically disapprove of the Postmaster General securing or promoting the publication of articles tending to exalt his own share in securing the conviction of Burton by slighting or depreciating the action of the Department of Justice, and I have the same feeling as regards this Oregon matter in the case of your department. Such an attitude tends to prevent the cordial working together of the departments which is essential if good results are to be secured. Thus in the article in question, in dealing with the Nebraska land frauds, no mention is made of the fact that the Attorney General, Mr. Moody, before any request was made by you, brought the matter of the conduct of the district attorney and marshal to my attention, both officials being thereupon removed. Anyone reading the article in question would believe that the Interior Department in these matters had acted with practically no support from the Department of Justice. I call your attention, furthermore, to the fact that in this article in the New York Herald it is again stated that Senator Warren's amendment was one in the interest of land speculators, and that you succeeded in having it struck out; so that the attack upon him was repeated in a form which, failing any public denial or repudiation by you, was inevitably accepted as being sanctioned by you.

I also call your attention to the pamphlet issued by the Department of the Interior upon the hearings before you upon the matter of the oil leases in the Indian Territory and in Oklahoma, these hearings running from May 8 to June 19 last. I have already written to you about the unauthorized publication by you of Gov. Higgins's personal letter to me, which I referred to you for comment, and of the unauthorized publication of your letter to me in which you gave me the comment requested; I need hardly repeat what I then said, that such action by a Cabinet minister is not only, as far as I know, unheard of, but, of course, completely destroys the necessary confidential relations between the President and the Cabinet minister. The President must be continually sending confidential matter to his Cabinet ministers for comment and return, if his work is to be well done; and it is out of the question thus to send these matters if they are to be published, without any authorization from him, together with the letters of the Cabinet minister in reference thereto. My attention, however, has been specifically called to two or three matters in connection with this pamphlet, which I did not know of or appreciate when I wrote you before. On page 49, you say, speaking of Mr. Barnsdall, that "he thought he would influence me, through the President, by politics. The President gave me Gov. Higgins's letter to answer, which I did." I desire to know whether this is to be construed as meaning that I was endeavoring to influence you for political reasons to take or leave untaken some action in this matter. Moreover, I desire to know what was the object of publishing the pamphlet containing the hearings on the leasing of the oil lands in the territories in question, and why, at the very beginning, in the most prominent place in that pamphlet, there should appear, out of their chronological order, Gov. Higgins's letter, marked "personal" and your answer thereto, in which you speak of Mr. Barnsdall as Gov. Higgins's "political friend"—a fact as to which I know nothing, and which had nothing to do with the case in any event. On page 48 you say of Mr. Barnsdall, "In this gas-line proposition he rushes off to Gov. Higgins, of New York—there is where the politics come in—and got Gov. Higgins to write to the President." I do not understand the object in making such an assertion, and I would like an explanation from you in reference thereto. The representative of Mr. Barnsdall, who has called upon me and written to me again and again, is ex-Senator Jones, the chairman of Mr. Bryan's campaign committee and a Democrat; and the gentleman with whom Mr. Barnsdall seems to have his chief interest in common is Mr. Guffey, also a Democrat. I may add that on the facts, as so far given me—of course, I shall not come to a definite conclusion until the final arguments are all before me—I am inclined to support your position as regards Mr. Barnsdall and as regards the matters brought before me, both by ex-Senator Jones and Gov. Higgins.

Let me emphasize, what should surely need no emphasis, that my aim in this matter is not to shield any man, but to prevent any injustice. It is an outrage to shield a criminal; it is scarcely less grave offense, wantonly or without sufficient cause, to accuse an innocent man, or a man innocent of the particular offense with which he is charged. The Department of Justice, for instance, has been able to secure the conviction of two Senators, Messrs. Mitchell and Burton. Senator Mitchell was convicted through Mr. Heney, especially appointed by Attorney General Knox to carry out the suits. Mr. Mitchell was implicated in matters coming under your department; Mr. Burton was implicated in matters coming under the Post Office Department. If, instead of setting quietly to work to obtain the necessary evidence and to secure conviction, the Department of Justice had permitted public statements to be made containing general attacks upon the Senators in question, together with laudatory comments upon the Attorney General's action, the Senators would have probably escaped punishment. The offense would have been even greater if the attacks had been made either upon innocent Senators or private individuals, or upon the same Senators for things which they had not done.

Very truly, yours,

——— ———,

Hon. E. A. HITCHCOCK,
Secretary of the Interior.

That on November 30 Secretary Hitchcock wrote the President as follows:

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 30, 1906.

The PRESIDENT:

Referring to the personal interviews had with you at different times with reference to the situation in Wyoming, and to your letter of the 6th ultimo inclosing a communication from Senator Warren, of the 5th ultimo, together with your subsequent letter of the 9th ultimo, all relative to recent investigations by officials of this department of alleged illegal fencing and land frauds in Wyoming, I have the honor to report that information regarded by me as reliable having been received to the effect that a great deal of the public land had been inclosed and occupied by private interests for many years, and that such inclosures were still illegally maintained, and that there were in that State other fraudulent appropriations of the public domain, I directed Special Land Inspector E. B. Linnen, assisted by Special Agent W. C. Hintze, to make a careful examination of the situation.

Before commenting upon the inspector's report it is proper for me to state that, because of the information above referred to, I had a personal interview with Commissioner Richards in my office, at which I informed the commissioner of the reports that had reached me, and more especially with reference to the alleged inclosure by the Warren Live Stock Co. of a large amount of public land. In reply Commissioner Richards expressed the opinion that the company had no illegally inclosed public land; that such inclosures, if any, were within fences erected on section lines, and in such manner as to absolve it from any violation of the existing law.

The impression made upon me as the result of this interview was not favorable, and I soon thereafter took steps to make a special independent investigation of the conditions in Wyoming, because of information furnished me by a high official of the Government to the effect that the special agents of the General Land Office in Wyoming were meeting with every possible obstacle in the discharge of their duty, and to such an extent as to render it advisable and necessary for me to communicate directly with one special agent, viz, Mr. W. C. Hintze, who had been by the General Land Office detailed for service in Wyoming July 1, 1905.

Accordingly, under date of December 28, 1905, a letter was addressed by my direction to Mr. Hintze, calling upon him for a full report of the situation as he found it, and directing him to send me copies of any reports he had made to the General Land Office, and, generally, to furnish an outline of the public-land situation in the State of Wyoming.

In reply to my instructions I received a letter from Mr. Hintze dated January 7, 1906, as per inclosed copy, marked "Exhibit A."

This letter was followed by a second communication dated Buffalo, Wyo., March 11, 1906, detailing the important work in which he had been engaged, naming particular cases and the difficulties he was encountering in the prosecution of this work. A copy of this letter is also inclosed herewith, marked "Exhibit B."

Mr. Hintze's next letter was dated Buffalo, Wyo., April 11, 1906, and refers to instructions he had received from the General Land Office directing him to make a report covering certain features of the Wyoming fence situation, and, at the same time, gave an extract from a personal letter which had been addressed to him by a clerk in Division P, General Land Office. Mr. Hintze's letter closed with an extract from a letter written by W. E. Mullen, then attorney general of the State of Wyoming, containing some remarkable statements, as per copy of Mr. Hintze's letter, inclosed herewith and marked "Exhibit C."

Mr. Hintze's next letter to me was dated Buffalo, Wyo., June 5, 1906, in which he commented upon the action of the United States district attorney in connection with the Weare case, as per copy of his letter inclosed herewith, together with a copy of my letter to the honorable Attorney General dated June 11, 1906, also herewith, and marked respectively "Exhibit D" and "Exhibit E."

My next letter from Mr. Hintze was dated Buffalo, Wyo., August 18, 1906, as per copy inclosed herewith, marked "Exhibit F," and reports upon the conduct of the United States district attorney, whom he charges with having "willfully, knowingly, and corruptly violated his oath of office" in the presentation of the Weare inclosure case.

A copy of this letter was inclosed in my letter addressed to you at Oyster Bay and dated Monadnock, N. H., August 30, which was followed by a second letter addressed to you by me at Oyster Bay under date of Monadnock, N. H., September 4, inclosing certain correspondence had with the Department of Justice regarding the United States district attorney, which contains a complete statement of the whole situation so far as he is concerned, and which you will doubtless now recall.

I now further inclose copy of Mr. Hintze's letter addressed to the Commissioner of the General Land Office through P. R. Wadsworth, special agent in charge, dated Sundance, Wyo., September 6, 1905, and marked "Exhibit G," which was by Mr. Wadsworth forwarded to the Commissioner of the General Land Office under date of September 11, as per inclosed copy, marked "Exhibit H," the contents of which form an important contribution to the general situation in Wyoming. Also copy of the reply of the Commissioner of the General Land Office dated November 18, 1905, to Mr. Hintze's report of August 26, 1905, is inclosed herewith and marked "Exhibit I," while, as closing this part of my report, I hand you herewith copies of a letter from Mr. Hintze to the United States district attorney dated September 1, 1905, and the United States district attorney's reply to said letter dated September 6, 1905, and marked "Exhibit J" and "Exhibit K," respectively.

I also inclose copy of a letter addressed to Mr. P. R. Wadsworth, special agent in charge, by Mr. Hintze, dated August 28, 1905, and marked "Exhibit L," and would invite special attention to the last four lines of said letter.

In view of the correspondence had with, and reports received from Mr. Hintze, I reached the conclusion that the work he had in hand and the obstacles he had to contend with were too much for any one man, and I therefore detailed him to assist Special Land Inspector E. B. Linnen, who was directed to take charge of the investigation of the fencing and land fraud matters in Wyoming and in other adjacent States, as is shown by the inclosed copy of Inspector Linnen's letter to me, dated November 15, 1906, and marked "Exhibit M," in which are detailed the various special services rendered by him, beginning with the month of February last.

The result of Inspector Linnen's work in Wyoming is herewith submitted in a report dated September 7, 1906, together with plats, affidavits, and other papers relative to conditions in Wyoming.

The principal propositions submitted for consideration by this report and its accompanying inclosures are briefly set forth in the summary accompanying the papers, and your attention is hereby called to inclosures Nos. 8 and 9.

The situation, as presented by Inspector Linnen's report, is not only alarming by what it reveals, but necessitates, in my judgment, drastic action. It would appear from his report that there were at the date of that report, viz, the first week in September, over 446,000—possibly half a million—acres of land at that time under fence, in violation of the act of February 25, 1885 (23 Stats., 321), the inclosures having been erected and maintained by 35 or 36 different companies or individuals, the Warren Live Stock Co. having under fence over 40,000 acres, notwithstanding it had been duly notified, as required by circular dated January 29, 1904, by registered mail, as late as October, 1905, the return card for said notice being in possession of the department.

Please understand that the duty of the special agent was, after giving the notice required by the circular of January 29, 1904, to inform the United States district attorney. This was done over and over again, as is shown by Mr. Hintze's letters, but no action was taken, or such action as was talked about was postponed from time to time until it practically resulted in no action at all, but on the contrary, an apparent determination to ignore the law and defeat justice, while it further appears by Mr. Hintze's letter to Special Agent in Charge Wadsworth, dated August 28, 1905 (Exhibit L), that the United States district attorney told him that "inasmuch as three-fourths of the public domain had been proved upon by perjury, to let them have it; that the paying of taxes was enough punishment for the deed, and what the State needed was the land on the tax rolls to reduce taxes."

Under such circumstances you will see how absolutely helpless the special agents of the General Land Office were, and that the revelations made in Inspector Linnen's report are by no means a matter of surprise.

The testimony of the special agents, department inspectors, and officials of the Forest Service submitted with Inspector Linnen's report all show a total indisposition on the part of the United States district attorney to institute any prosecutions or to make any earnest effort to enforce the law prohibiting the unlawful fencing of the public domain, he having declared that it was "impossible to secure a conviction in Wyoming for the illegal fencing of Government land."

Referring to your letter of October 9, I inclosed to you on October 10 copy of a letter of that date addressed by me to the Commissioner of the General Land Office, calling upon him for the information you desired, and in your letter of October 11 acknolwedging mine of October 10, you stated that my said letter should bring the information wanted.

I now have the honor to inclose herewith for your information copy of the acting commissioner's reply, dated October 15.

You first ask for a list of all the notices sent to the offending parties to remove their fences under the 60-day regulation. The acting commissioner transmits with his letter copies of so much of the semiannual reports of Special Agents Jenison and Hintze, dated July 1, 1905, and January 1, 1906, as relates to unlawful inclosures, and states that said reports, with the cases specifically referred to in his report, are all of which his office has any record. Those semiannual reports show that notices were served by said special agents upon 165 persons, whose names are given, and the time and character of the service indicated.

In addition thereto, the first 10 pages of the acting commissioner's letter are devoted to a history of 10 cases that have been finally disposed of, where proceedings were instituted to secure the removal of the fences.

In my letter of October 10, I inclosed a list of the persons who were alleged in Inspector Linnen's report to be maintaining unlawful inclosures, and directed that a full statement be made from the records of his office in relation thereto. In the acting commissioner's letter of the 15th he advised me that only four of said cases appeared to have come to the attention of his office, or to that of the special agents, and he designates them as the cases of the Warren Live Stock Co., A. W. Bristol, Robert P. Allen, and Wilkerson Bros. As a matter of fact, eight of such cases came to the notice of Special Agent Jenison, and notices were served by him, as shown in the summary transmitted with the papers in this case. The Bristol case has been disposed of. The Warren Live Stock Co. is now under consideration. In the Robert P. Allen case, he says Special Agent Jenison gave notice to remove, but that no further action appears to have been taken, although he does not say why. And in the case of Wilkerson Bros., he says notice to remove has been given, and quotes from Special Agent Jenison's letter, in which that official seemed to have doubted whether proceedings could be maintained against said inclosure, by reason of an alleged decision of the supreme court of that State, but he does not advise the department that any instructions were given Special Agent Jenison in regard to the matter.

The acting commissioner then explains why proceedings were not instituted in the case of J. C. Spencer, which explanation appears to be satisfactory, and states that the matter will now be submitted to the special agent in charge with instructions to confer with the district attorney.

He also refers to the John G. Bunney case, referred to Special Agent Wadsworth in September, 1905, and states that on October 8 of this year the case was submitted to Special Agent Pugh, with directions to make prompt report. It appears that this matter was not submitted to the district attorney by Special Agent Hintze because of office instructions. What those office instructions were the acting commisioner does not advise me.

Delay in the case of John W. Stoner is explained by the statement that until the beginning of the fiscal year, as he advised the department on the 22d of June last, no special agent was available for an investigation of the matter.

He also advises me that one J. H. Ryckman, of Evanston, Wyo., had advised him that he (Ryckman) had sent an affidavit to the United States attorney at Cheyenne, charging that Stoner was maintaining an unlawful inclosure, and that Ryckman had submitted a copy of his affidavit with his letter, but he does not advise me whether he regarded said affidavit as sufficient or what subsequent action he had taken in regard to the matter.

He reports that the case of A. C. Hubbard & Sons has been closed, the unlawful inclosure being abated.

He also reports the case of H. G. Lingle closed, unlawful inclosure having been abated.

He then gives a list of eight cases referred to Special Agent Jenison at various times from May 14, 1903, in which he states no report received or no action taken. Why no report was received or called for or no action was taken he does not advise me.

To summarize, notices have been given in 165 cases; proceedings have been instituted in 10, with favorable results to the Government; 2 inclosures have been removed in response to notices given; 2 are in the hands of the special agent in charge and 1 before the district attorney; in 8 cases no report has been received and no action taken; and the fences in the remaining cases are presumably still standing.

The officers who gave these notices were Special Agents Jenison and Hintze. Jenison is now out of the service, and the only excuse he offers for not having given other notices is that he never gave notices except where complaint was filed, and that it was impossible under the administration of the United States district attorney to get any action on these unlawful fencing cases; hence his resignation. Mr. Hintze reported upon as many as the onerous nature of his other duties would permit, and since July 1, 1906, he has been detailed to assist Special Land Inspector Linnen in his investigation of Wyoming matters, and it is largely through his efforts that I am now able to place the whole situation before you.

This, it would seem, fairly covers the information desired in your letter of October 9, 1906.

Replying now to the letter of Senator Warren of the 5th ultimo, I find that it is very largely devoted to a criticism of the conduct of the inspector and special agent and their methods in making this investigation. Some of the statements he imputes to them, if true, tend to show that they do not possess the tact or discretion to properly discharge their official duties, but the Senator states that he has no personal knowledge of the matters charged, and that they are based upon information that has come to him from sources which he does not disclose. So long have these officers been employed under this department in this character of service and so acceptably have they discharged their duties that I feel they ought not to be discredited without satisfactory proof. In fact, the material accusations made are so utterly inconsistent with the conduct of these officers during a long period of service that I am strongly inclined to the opinion that their affidavits, herewith submitted, should be given full credence. Attacks upon agents and inspectors employed under this department in the investigations of offenses are so frequent as to become the rule, and are usually found to be either wholly or in large measure unwarranted.

The Senator then proceeds to a discussion of his relation to the fencing and occupancy of public lands, from which it appears that he has been a stockholder in the Warren Live Stock Co. from the earliest period of the existence of that industry in Wyoming; that the company leased two large tracts from the Union Pacific Railroad Co. which it inclosed by fences, including the alternate sections of public land, long before the passage of the law which makes the inclosure of public lands a penal offense; that, believing his company had some rights to the inclosure, the nature of which he does not specify, it continued to maintain its fences notwithstanding the act of Congress. But from his statement it would appear that the company was not long in ignorance of the contention of the Government that its fences were unlawful, for he says in substance that in the early part of Mr. Cleveland's first administration the matter was investigated by an agent of the Government, followed by court proceedings in the then Territorial courts, which held against the contention of the Government. The fact that the case was never submitted to the Supreme Court of the United States, and the further fact that all the decisions of the Federal courts on the subject have been flatly the other way, are somewhat suggestive that the case may have been insufficiently prosecuted in the Territorial court. The Senator is certainly not unfamiliar with these Federal cases, for he tells you that later a suit was brought by the Government in the United States court of Colorado, and I understand that the conditions and questions involved were substantially identical with those of the Warren Live Stock Co. The action here referred to was decided by the United States Circuit Court of Colorado January 25, 1894, in which it was held that the fencing was a violation of the law. On appeal it was decided the same way by the United States court of appeals February 20, 1895. It was finally taken to the United States Supreme Court, which, on May 24, 1897, affirmed the decision of the courts below.

It would therefore seem that the Warren Live Stock Co. was advised 20 years ago that it was the contention of the Government that its inclosures of public land was unlawful; that something like 13 years ago the company knew that this contention was sustained by a decision of the United States circuit court; that 12 years ago it knew the decision of the circuit court was sustained by the United States court of appeals, and that 10 years ago it had knowledge that the Supreme Court of the United States affirmed the decisions, and yet, according to the report of the inspector, the company had, during all that time, persisted in maintaining such fences in utter defiance of the law as declared by the Government and affirmed by the highest judicial tribunal.

In recognition of those decisions Senator Warren asserts that the company has taken down miles of its fences, but makes no explanation as to why it continued to unlawfully maintain the fences standing at the date of the inspector's report.

For the guidance of special agents, the General Land Office, with the department's approval, two years ago made a regulation requiring them, when advised of the existence of an unlawful inclosure of public lands, to give the owner of the fence notice to remove it within 60 days.

The records show that this notice was given the Warren Live Stock Co. in October, 1905, both in Colorado and Wyoming, but, whether it was or not, the fact remains that this company had for many years maintained an inclosure of many thousands of acres, as hereinbefore stated, of the public domain, knowing that it was a penal offense against a statute of the United States.

If it will be permitted violators of this law to successfully plead this regulation as executive absolution or permission for the acts charged against them, the sooner it is abrogated or modified the better it will be for the ends of public justice. The idea that this regulation contemplated immunity from prosecution of this class of offenses until complaint is made and for 60 days thereafter is absurd, and was very properly repudiated publicly from the bench by a learned judge of the United States court. Of course, the Secretary of the Interior is vested with no such authority. The fact, however, that this regulation has been so pleaded in excuse or extenuation of the offense by those who have broken the law forcefully suggests the necessity for its abrogation or modification, and to this end I shall as early as practicable desire a conference with you on the subject.

Mr. President, I entered the service deeply imbued with the importance to the people of our great public domain. It is the Nation's priceless heritage, and I feel that every available rod of it should be regarded as sacredly dedicated to the purpose of homes for the homeless. I believe that this would best promote the welfare of our citizens and afford the best security for the stability of our Government. I was impressed that every law enacted for its protection should be rigidly enforced—and this has been a cardinal policy of my administration, but I regret to say all my efforts to release it from the grip of its despoilers have been met by every embarrassment that human ingenuity could devise; powerful influences have been concerned, and they have not hesitated to aggressively exert every agency they could command to weaken the hand of the law; even local land officials have been subservient to their purposes; their machinations seemingly have, at times, not been without paralyzing effect upon the machinery of justice; too frequently the officers of the law appear to have been under the bewitching spell of their power; the punishment imposed by the courts has in many cases been so conspicuously inadequate as to encourage rather than deter violation of the law. Whether this official stagnation is due in any degree to local political influences to which these officials are more or less indebted for their commissions and the retention of their positions, it is not important to discuss in this paper. It is the deplorable fact, however, that too many of those charged with the administration of the law are bringing reproach upon the public service that impels me to call your attention to the grave difficulties which beset the administration in any efforts it may make to rescue the public domain from a serious peril.

I do not care to refer to the animus against myself so unmistakably reflected in some of the correspondence in this case, further than to say that in this investigation I have been actuated solely by a sense of public duty, without the slightest prejudice for or against any person or persons interested. In such efforts as I have made to protect the service in my charge from the ravages of inordinate greed it has not been my custom to consider the station or power of the guilty; they all look alike to me, except that, in my view, the higher the offender the greater the crime against society and law, because of the force and influence of the higher example.

It is not possible for persons and corporations of great influence and power to maintain inclosures of the public lands in open disregard of a criminal statute without thereby encouraging others to do likewise, and here it may be properly noted that the reports under consideration show that approximately 500,000 acres of the land belonging to the United States in the State of Wyoming are by this unlawful means appropriated to the exclusive use of private interests for private gain. If corporations or individuals of wealth, power, and influence may with impunity appropriate the exclusive use and possession of hundreds of thousands of acres of public land in violation of law, why should the obscure, the ignorant, and the powerless be imprisoned for offenses against the land laws, which usually consist of fraud and perjury in the interest of others who are far more culpable? May it not, indeed, be due in some measure to such high example that there seems to be a growing disregard, even among otherwise good citizens, for laws designed to protect the public lands from spoliation?

The conditions in Wyoming are kindred to those of many of the other public-land States. There have been some important convictions, it is true, but many of the hundreds of pending indictments are not less so. There are still numberless cases which have not been presented to a grand jury.

In many cases the manner in which prosecutions are conducted and disposed of is well calculated to inspire a public belief that the administration of justice in those cases is a sham. More than a year ago many indictments in one of the States were continued under an order of the court that unless the offenders should remove their fences in 60 days the cases must be prosecuted at the next ensuing term of the court. At the next term, six months after the continuance, several of the defendants had not removed the fences, and these cases were again continued until some time next spring, when I understand if it shall then appear that the defendants have removed their fences it is the purpose of the United States district attorney to dismiss the cases; but if the fences are not then removed and some other plausible pretext is offered for the omission, may not the farce go on indefinitely? In one of the cases a plea of guilty was entered and a fine equal to one-fourth of a cent per acre per annum was imposed, the defendants having had under inclosure 60,000 acres for a period of eight years.

My official interest in this matter will soon terminate, but I shall have the comfort in retiring from the public service of a well-founded conviction that the action of the President relative to this class of lawlessness will be sufficiently rigorous to enable my estimable successor to successfully administer the law.

In conclusion, Mr. President, I beg to state that in the Revised Statutes you will find the law and the penalties for its violation. Herewith are the facts as related by Inspector Linnen in his report. The law and the facts are submitted for your consideration and such action as in your wisdom may best promote the public interest.

Respectfully,

E. A. HITCHCOCK, *Secretary.*

The President wrote the Secretary of the Department of the Interior on December 4, 1906, as follows:

THE WHITE HOUSE,
Washington, December 4, 1906.

MY DEAR MR. ATTORNEY GENERAL: By direction of the President I forward to you herewith copies of letters from Secretary Hitchcock dated November 30 and December 1 and accompanying exhibits, and also copy of the President's letter to Secretary Hitchcock dated December 4, which explains itself.

Will you please furnish the President with a full report of the matter?

Very truly, yours,

WM. LOEB, Jr.,
Secretary to the President.

Hon. W. H. MOODY,
Attorney General.

The President also wrote the Secretary on January 17, 1907, as follows:

THE WHITE HOUSE,
Washington, January 17, 1907.

MY DEAR MR. SECRETARY: In answer to your letter of November 30 I, on December 4, wrote you, asking certain questions, some of which have not yet been answered. But another circumstance has just come to my notice in connection with your letter which makes it necessary for me to write again. From your letter it seemed that the first action on the part of the Department of Justice would be an investigation of the conduct of the district attorney of Wyoming. I directed that this investigation be undertaken at the earliest moment. Assistant Attorneys General Purdy and Cooley were detailed to undertake it, and your letter and the accompanying exhibits were given them. I understand that they will report shortly. I also sent copies of your letter to Commissioner Richards and Senator Warren, referring them to the Department of Justice for the exhibits. Yesterday, at the request of Senator Warren, I saw him in company with Assistant Attorneys General Purdy and Cooley, and he made various statements in contradiction of some of the important assertions in reference to his action made by Inspector Linnen. In the course of the conversation I was shown one of the 25 inclosures which accompanied your letter, being marked Exhibits "A" to "M," inclusive, and Exhibits 1 to 12, inclusive. This is Exhibit 3. It is headed "Synopsis in brief of Warren's boodling operations," this being the first line of a typewritten statement on the first page which recites such allegations as that 24 years ago—in 1883—Warren secured a Government homestead "by fraud and perjury"; that in 1889 he was accused in a letter to the New York Times of being "colossal land-grabber and a corporation tool"; that in 1890 a newspaper accused him of securing large sums "in the way of contingent fees, interest, and salary" while territorial treasurer, etc. At the foot of the page is a note stating that the above was written and handed to E. B. Linnen, special land inspector, by one Bartlett, of Cheyenne, who had resided there for many years, and who had also furnished the inclosed newspaper clippings. This memorandum was signed by E. R. Linnen. Then follow several pages of newspaper clippings, with headlines, attacking Senator Warren, the headlines being, for instance, "Senator Warren's first graft"; "Senator Warren's 'oil' room to be investigated"; "Public office for private graft," etc. Not a syllable of evidence is advanced in support of these charges, and almost all of them refer to matters not touched upon in your letter and with which the Department of Justice has not the slightest power to deal.

In short, this Exhibit 3 is simply a bundle of scurrilous allegations, the truth of which there is not so much as an attempt to prove, and which, moreover, have no relation whatever to the case; which offer no material for an investigation by the Department of Justice, and as to which no charge has been made by the Department of the Interior. I am utterly at a loss to understand why such an exhibit should have been forwarded by the Department of the Interior to me, especially in connection with your letter of November 30. I assume that it was not done with your knowledge. It has a value, however, because it deeply discredits the worth and the judgment of Inspector Linnen, upon whose finding so much of your letter of November 30 was based. In closing that letter you say: "Herewith are the facts as related by Inspector Linnen in his report." One of the chief facts about Inspector Linnen is that he should have been willing to forward such a farrago of loose accusation without even so much as an attempt to investigate it, or to find out the truth about it, or to comment on the irrelevancy of the charges. It casts a grave doubt upon his discretion, judgment, and good faith and makes me feel very much at a loss as to how far I am warranted in proceeding upon any statements he submits. This is a matter I shall decide later.

Meanwhile, I should like Inspector Linnen's attention called to the character of this exhibit, and a report requested from him as to why he sent it in, and for what purpose. I should also like to know why such an exhibit was furnished to me as an exhibit with a document which it was evident that I would have to submit, together with the exhibits, to the Department of Justice. Moreover, from certain publications which appeared in the newspapers it seems to me that some person or persons have given hints to the newspapers of what this Exhibit 3 contains, it being falsely alleged that I had ordered an investigation into the facts therein related. I should like the names of all the men in the department who had anything to do with drawing up your letter and with forwarding it and the accompanying exhibits to me. This Exhibit 3 was never looked at in my office, and in the office of the Attorney General has been in the custody of Messrs. Purdy and Cooley, and nothing could have come out from either there or here.

Very truly, yours,

——— ———.

Hon. E. A. Hitchcock,
Secretary of the Interior.

And on January 26, 1907, as follows:

The White House,
Washington, January 26, 1907.

My Dear Mr. Secretary: On January 19 the Attorney General wrote me that, having carefully considered the report of Messrs. Purdy and Cooley as to the case of United States District Attorney Burke, of Wyoming, brought up in your letter of November 30 last, he felt that in view of the report Mr. Burke's reappointment has become impossible, he adding "it does not seem to me that his removal is demanded in the public interest. His term expires to-morrow, and I do not think there is any reason why he should not be left temporarily in charge of his office until his successor has been selected. * * * I think it would be advisable to call the attention of the Senators from his State to the fact that he could not be reappointed by reason, not of any moral delinquency, but because he evidently has not been in hearty, zealous sympathy with the enforcement of the laws against parties guilty of illegal inclosure of public lands."

I agreed with the Attorney General and notified the Senators accordingly. I have just received from Assistant to the Attorney General Purdy the letter of January 25, which I herewith forward to you. I have gone over it with the Attorney General and agree with him as to the proper course to be followed in view of what it discloses. Mr. Bonaparte feels as, of course, I do—that there has been a complete breakdown on the part of the agents of the Interior Department in this matter so far as making any case against Senator Warren is concerned. The showing is particularly bad for Linnen. I regard the case as much graver against him than it is against District Attorney Burke. It appears from Mr. Purdy's report that his case has been prepared in the loosest and most inaccurate manner and that his exhibits themselves do not substantiate what he alleges. The special agent in his report to you stated that the Warren Live Stock Co. had 46,000 acres of Government lands unlawfully and illegally inclosed in Wyoming and 1,100 acres similarly inclosed in Colorado. The Attorney General reports that an examination of his reports and the exhibits shows that as to the first allegation 33,000 of the 46,000 acres were in truth and in fact not inclosed, but open to the general public, and that as to the remaining 13,000 acres the fences complained of are in all probability not the fences of the Warren Live Stock Co. or of any of its officers and agents, and that as regards the inclosure in Colorado it appears that in all probability the fence complained of is the fence of some other person or persons.

On page 9 of his report Mr. Purdy explains that the report of the special agent is to a certain extent "materially discredited" by his (the special agent's) own statements, which show that either he or Mr. Hintze has been guilty of grave mistakes, while two of the exhibits, A and B, materially contradict one another, and according to Mr. Linnen's oral statement to Mr. Purdy neither of these was correct. Mr. Purdy further reports that he desires to call attention to the fact that Special Agent Linnen charges generally that acts of violence have been committed by the agents and employees of the Warren Live Stock Co. for the purpose of frightening off and intimidating settlers, but that the allegations are general and not specific, so that as regards this charge there is nothing for him to investigate. He reports, and Mr. Bonaparte agrees with him, that no suit should be instituted against the Warren Live Stock Co. or its officers or agents upon the report and accompanying plats, as the same were submitted by the Interior Department, because they do not contain sufficient information and data to justify the Department of Justice in directing the institution of such a suit. Mr. Bonaparte thinks—and to me it is evident that he is right—that the whole report of Mr. Linnen as submitted to me by you in your letter of November 30 and as used by you as the basis of that letter is so discredited that no action can be taken upon it and that there must be an entirely new examination of the land in question to determine whether there has been any illegal action whatever. It is evident that this examination must be undertaken by some man of a very different type from Mr. Linnen and his associates. I desire that it be undertaken as soon as the weather conditions in Wyoming will permit. I should hope that this would be by the 1st of April; but if not, as soon thereafter as possible.

Sincerely, yours,

THEODORE ROOSEVELT.

Hon. E. A. HITCHCOCK,
Secretary of the Interior.

On January 25, 1907, Assistant Attorney General Purdy submitted his report as follows:

DEPARTMENT OF JUSTICE,
Washington, January 25, 1907.

The PRESIDENT:

In accordance with your verbal instructions I have ascertained from the Interior Department that an order has been issued and duly published notifying special agents and receivers and registers of local land offices throughout the United States that the provisions of the act of February 25, 1885, for the summary destruction of inclosures and obstructions existing in violation of said act will be rigidly enforced on and after the 1st day of April, 1907. Such officers and agents were directed by the Commissioner of the General Land Office, in letter dated January 5, 1907, to give said order the fullest publicity possible in their respective districts by publication in newspapers and by mailing copies of said order to all persons who they had reason to believe were maintaining fences in violation of said law.

You further requested that I should give you my opinion in writing as to what action, if any, should be taken by the Government upon the report of Special Land Inspector E. B. Linnen, dated September 7, 1906, wherein the Warren Live Stock Co. is charged with having maintained for several years prior to said date unlawful inclosures of public lands in the States of Colorado and Wyoming.

Before attempting a consideration of the facts relative to the illegal fences of the Warren Live Stock Co., as reported by special agent of the Interior Department, I desire to refer briefly to certain features of the law under which suits of this character must be instituted. The act of February 25, 1885, is one of those statutes which leaves it to the discretion of the administrative officers charged with the enforcement of the law, as to whether the Government shall proceed by a suit in equity, having for its purpose the removal and destruction of the illegal fences, or whether the proceedings shall be by way of indictment. I am advised that for many years subsequent to the enactment of this law little, if any, effort was made by the administrative officers of the Government to secure its enforcement. During such period, the unlawful practice of inclosing large portions of the public domain by barbed-wire fences became so general as to demand vigorous action on the part of the Interior Department. Having two methods of procedure provided for in the law, the officers of the Government in the earlier stages of these prosecutions, quite naturally elected to proceed by bill in equity, except in those cases in which the facts disclosed circumstances of peculiar aggravation; that is, where the offending parties had resorted to violence for the purpose of excluding the general public from the public lands which had been unlawfully inclosed.

The leading case upon the subject of illegal fencing is Camfield *v.* United States (167 U. S., 518). In this case the Supreme Court of the United States upheld the constitutionality of the law. Mr. Justice Brown, in delivering the opinion of the court, expressed an opinion as to the purpose and object of the act. He said:

"But the evil of permitting persons, who owned or controlled the alternate sections, to inclose the entire tract, and thus exclude or frighten off intending settlers, finally became so great that Congress passed the act of February 25, 1885, forbidding all inclosures of public lands and authorizing the abatement of the fences."

In the Camfield case the facts disclosed a complete inclosure of townships Nos. 7 and 8 north of range 63 west of the sixth principal meridian, lying within the limits of a grant made by the Government to the Union Pacific Railroad Co. The defendants had acquired from the railroad company the right to use all the odd-numbered sections of land lying within said townships 7 and 8 and outside thereof, immediately adjacent to the even-numbered sections lying within and on the margin of said townships. In building the fence complained of, the defendants had constructed it entirely on the odd-numbered sections, either within or without townships 7 and 8, so as to completely inclose all the Government lands lying within said townships, but without locating a fence on any part of the public domain so included. It was held by each of the courts below that the fence constituted an unlawful inclosure of public lands and the judgment of the Circuit Court of Appeals for the eighth circuit was affirmed by the Supreme Court of the United States. I shall take occasion later on to distinguish the Camfield case from the case here under consideration as, in my opinion, the facts in the two cases are materially different.

From a careful consideration of the Camfield case, it seems to me that the test to be applied as to whether a particular fence constitutes an unlawful inclosure, is whether it has been constructed and is being maintained in such a manner as to exclude or frighten off intending settlers, or as to whether there has been a practical appropriation of the public domain to the exclusion of the general public. Tested by this rule, the inclosures complained of in the Camfield case were undoubtedly within the letter and spirit of the statute. It is true that there were swinging gates through the fences opposite the even-numbered sections, but the purpose and the natural effect of maintaining the fences in the manner constructed operated to exclude the general public from the public land so inclosed and was calculated to frighten off intending settlers.

The case submitted by the Interior Department against the Warren Live Stock Co. is based upon certain affidavits and the reports of surveyors, together with certain plats purporting to show the location of the fences of the Warren Live Stock Co., which it is alleged constitute an unlawful inclosure of Government lands. The first case is represented by plat marked "Exhibit A," purporting to show an unlawful inclosure of Government lands amounting in the aggregate to approximately 33,000 acres. The second case is represented by plat marked "Exhibit B," purporting to show an inclosure of approximately 1,200 acres; while the third case, represented by "Exhibit C," purports to show an inclosure of public lands aggregating approximately 13,000 acres. I shall take up and consider these cases in their order.

EXHIBIT A.

The first point to be considered in connection with the fences represented by this exhibit is the various localities along the exterior boundary of the pasture where either no fence has been constructed or where the fences have been removed. Approaching these lands from the city of Cheyenne, the fence is down for a distance of 520 feet along the western boundary of the pasture. Along the southern boundary of this pasture there are also two gaps in the fence, one 800 feet wide opposite section 32 in township 15, the same being Government land, and one 500 feet wide opposite section 36 in said township. On the eastern boundary it also appears that for a distance of 2½ miles no fence has ever been constructed. While these breaks in the fence should not be given undue importance, considering the extent and character of the lands alleged to be inclosed, they nevertheless have an important bearing when considered in connection with the facts as shown by this plat to which I shall now refer.

It appears that these Government lands would ordinarily be approached by settlers, for the purpose of examination and settlement, by means of the county road running from the city of Cheyenne in a northeasterly direction. This county road enters the land alleged to be inclosed at a point 12 miles north of Cheyenne, at which point the road divides, one road leading to the north over the lands in controversy, the other road running northeasterly therefrom across the lands in this pasture. It appears that these roads are open to and traveled by the general public, and are public roads in every sense of that term. It is apparent from this plat that any person desiring to visit the public lands alleged to be inclosed may come out upon this county road from the city of Cheyenne by the most convenient route until he arrives in the vicinity of the lands which he desires to visit, and that such person may thereupon leave such county roads at any point for the distance of 9 miles along said roads and drive freely and without obstruction upon any of the public lands contained in said inclosures. In other words, it is apparent from a mere inspection of this plat that the fences are not constructed upon a foot of Government land, and that they are not arranged in such a manner as to exclude or frighten off intending settlers. The mere statement that an intending settler may travel by the most convenient route to any of the public lands alleged to be inclosed without obstruction goes far, in my judgment, to discredit the case presented by the special agent of the Interior Department, and upon which the Government must predicate its suit for an injunction.

It would be difficult to properly appreciate the force of these suggestions without having Exhibit A before you for inspection. It is claimed that the Warren Live Stock Co. own or control approximately 60,000 acres of land within this alleged inclosure, and that said company is using said lands for grazing purposes. The Government owns, as I said before, 33,000 acres of land. The law provides that these lands which the Government owns shall not be inclosed and that no person shall be prevented or obstructed from free passage or transit over or through such public lands, and that the public shall not be excluded or frightened away therefrom. The question, therefore, is as to whether the fences complained of are so arranged as to violate this law. Having gone carefully over the map, with the rights of the public to these lands constantly before my mind, I am forced to the conclusion that the law has not been violated if every fact as represented by this plat be accepted as true.

There is another matter in connection with this plat to which I feel it my duty to call your attention, which is that this plat has been, in a measure, discredited by the very official under whose direction this investigation was made and this plat prepared. When this point relative to the location of these county roads first occurred to me, I requested Mr. Linnen to come to my office in order that I might obtain from him information as to the character of these roads and their use by the general public as highways of travel. Mr. Linnen then very frankly informed me that this point had not occurred to him while making this investigation, and he further stated that, to his personal knowledge, a gate is maintained across the county road in section 35, township 16. He further stated that a fence was maintained along the easterly side of the county road running north from the main county road where the two join in section 35, township 16. In other words, that the plat, Exhibit A, is incorrect with respect to these two matters. The existence of a gate across a county road would, of course, constitute a public nuisance, which could be abated by anyone, and would, furthermore, subject the parties maintaining such a gate to liability for a criminal prosecution in the State courts. The existence of a fence along the easterly side of the county road running north through township 16 would, of course, cut off access to several sections of Government land by the most convenient route of travel, and might materially affect my conclusions with respect to the case presented by this plat, Exhibit A. Mr. Linnen, however, states that he did not personally accompany the surveyor and Mr. Hintze, who located the fences along this branch of the county road. It is only necessary to state that if these investigators were locating the fence of the Warren Live Stock Co. it is difficult to conceive how they would make the mistake of locating the fence of that company on the westerly side of this road, when, as a matter of fact, the fence is located and maintained along the easterly side of the road. I simply mentioned these points for the purpose of showing that the report of the special agent is, to a certain extent, materially discredited by his own statements, which, to my mind, is an additional reason for reaching the conclusion that no suit should be instituted upon this report, so far as it relates to Exhibit A.

Exhibit D, which is a large map accompanying this report, purports to represent the location of the different pastures within 30 or 40 miles distant from the city of Cheyenne. This map, Exhibit D, shows a material variance from Exhibit A, with respect to the location of the north branch of the county road hereinbefore referred to. This exhibit shows at least 10 additional miles of said county road to be within what is described as the Warren pasture, while the plat marked "Exhibit A" shows only about 3 miles of such road to be within the Warren pasture. These two plats show a material variance with respect to the location of this road, and according to Mr. Linnen's oral statement to me neither map is correct in this respect. In other words, if I am mistaken in the views which I have expressed relative to the law as applied to the admitted facts, I shall still be inclined to defer action in the courts until accurate and trustworthy plats are submitted showing with reasonable certainty the location of the fences complained of.

If a suit in equity were instituted against the Warren Live Stock Co. and its officers to compel the removal of these fences as shown on this plate, and every allegation of the bill were admitted by the defendants, I am inclined to think that a court of equity would not assume to order the destruction of any portion of the fences shown by this plat to have been in existence in the month of August, 1906, for the reason that they do not constitute an unlawful inclosure and do not prevent or obstruct the public from free passage or transit over or through the public lands in question. It is true that it is possible to take a position upon some of these public lands from which it would be impossible to go in a direct line to other public lands within the inclosure, or outside of the inclosure, without coming in contact with a barbed wire fence, but I do not understand that the law contemplates that an owner of lands is prohibited from erecting a fence thereon which may prevent persons from crossing his lands in order to go upon the public lands. In every community lands are fenced in, often in such a manner that the general public is compelled to go around them in order to reach lands situated upon the other side. Applying the rule as hereinbefore laid down it seems to me that these lands may be freely visited by intending settlers without obstruction, and that there is nothing to prevent other stock raisers from driving their cattle along the county road and pasturing the same upon the public lands alleged to be thus unlawfully inclosed.

EXHIBIT B.

Exhibit B purports to represent two pastures of the Warren Live Stock Co., described upon the plat as pastures Nos. 1 and 2.

Pasture No. 2.—Referring to Exhibit B, it appears that the Warren Live Stock Co. owns or controls approximately 50,000 acres of land immediately southwest of Cheyenne, which has been inclosed or partially inclosed by a barbed wire fence. It further appears that interspersed among these 50,000 acres the Government has title to about 600 acres. It further appears that on the south of this inclosure 1,000 feet of wire is down, and that on the east of the said inclosure along the county road the wire fence is down for a distance of three-quarters of a mile. Under the facts as disclosed by this plat, it does not seem to me that the Government would have a very good standing before a court of equity. The most that the court would do, in my judgment, would be to require the Warren Live Stock Co. to take down a portion of the fence along the westerly side of the county road so as to afford access to those isolated portions of Government land. In other words, the court on a full hearing would probably permit the company to close up its fences in the lower part of this pasture and require it to open up a mile or so of fence along the county road immediately to the east of the Government lands thus inclosed. However this may be, Senator Warren states positively that the Government does not own an acre of land within this pasture, all of which he says can be verified from the records of the Land Department, and that the Government did not own an acre of land within this pasture when this map was made. If this be true (and I suggest that this fact be definitely ascertained by reference to the Land Office), of course no suit should be instituted, and even though the Government does retain title to these isolated portions of the public domain, aggregating about 600 acres, I seriously question whether a court of equity is going to require the Warren Live Stock Co. to take down and destroy fences surrounding some 50,000 acres of land which necessarily and incidentally happen to inclose an inconsiderable portion of the public domain. It is a very different case from the Camfield case, and it seems to me that all the equity of the situation is upon the side of the Warren Live Stock Co., so far as this particular pasture is concerned. It certainly would not be contended that if the Government had an acre of land located in the center of a tract embracing 50,000 acres that this law is designed to prohibit the owner of the 50,000 acres of land from fencing in his land simply because the Government happened to retain title to the 1 acre which the 50,000-acre tract surrounded and encompassed.

Pasture No. 1.—This pasture purports to contain about 30,000 acres of land which are owned or controlled by the Warren Live Stock Co. The tract is apparently entirely surrounded by a barbed wire fence, except at two places along its southern boundary, one being a small gap, the other 3,100 feet in width. The plat represents not only an inclosure of about a thousand acres of Government land, but the existence of a fence upon Government land, viz, upon section 30, in township 12 north, range 66 west, and on sections 6, 18, and 20, in township 11 north, range 66 west. In other words, there is about 4 miles of this fence which should be destroyed or removed.

Mr. Linnen informed me, as I remember it, that he ran out the lines of this fence, and at the same time stated that he took no notice of interior fences. Now, Senator Warren, when his attention was called to this fence, disclaimed any interest in this portion of the fence, and averred that his company had never built it and had never owned or controlled it. He maintains that the fence of the Warren Live Stock Co. runs directly south on the section lines, beginning at the southwesterly corner of section 19, township 12 north, range 66 west, terminating at the southwesterly corner of section 13, in township 11 north, range 66 west; that is, along the easterly line of the lands owned and controlled by the Warren Live Stock Co., and embraced in this pasture No. 1. If that be true it is very difficult to see how a court of equity could compel the Warren Live Stock Co. and its officers to destroy or remove this portion of the fence shown on this plat, Exhibit B, and to which the company disclaims all interest.

It is easy to see how persons running out these fences should fall into this error by following the exterior fence instead of following the interior fence, which alone incloses the lands of the Warren Live Stock Co. Senator Warren states that this fence which appears upon the plat has been in existence for a great many years, and that his fence on the section lines to the west of the fence as shown upon the plat has also been in existence for a great many years, and that his company has never made any claim to the Government lands lying between and inclosed by these two fences. I should therefore desire additional evidence as to the parties who are maintaining this fence upon the Government sections hereinbefore described before instituting suit to compel its removal.

When we consider the apparent irregularity of this portion of the fence encompassing this pasture as compared with the rest of the fence, the statement made by Senator Warren that the fence of the Warren Live Stock Co. along the easterly side of this pasture was run on the section lines is considerably strengthened. There would seem to be no apparent object, when we take into consideration the fact that this pasture contains 30,000 acres, in inclosing about a thousand acres of Government lands on the easterly side of this pasture by the broken and irregular line of fence and placing the same upon Government lands. And when we consider further that no other portion of the fences surrounding these pastures are erected upon Government lands, we are inclined to the belief that Senator Warren is right in his contention as to the location of the fence of the Warren Live Stock Co. in this vicinity, and that the fence which the special agent has marked upon this plat as the fence of the Warren Live Stock Co. is in all probability the fence of some other person or persons.

EXHIBIT C.

This plat is entitled the Warren, Moffatt, et al. pasture, Laramie County, Wyo. The lands represented on this plat are outside any railroad grant, and are therefore all Government lands, except those that have been acquired by settlement or purchase. According to the plat Government lands are unquestionably inclosed, but whether by Moffatt, or by the Warren Live Stock Co., or by both, it does not appear. Special Land Inspector Linnen, in his report of September 7, has the following to say with respect to this case:

"Exhibit C shows the exterior fence to be 26¼ miles in length, and that the public lands within said exterior fence aggregate 13,380 acres. This inclosure is maintained, it is alleged, by the Warren Live Stock Co. and others; in other words, it is not maintained solely by said company."

I find no further reference to this case anywhere in the report of the special agent. If this plat is to be taken as a true representation of the unlawful inclosure of Government land, it would certainly constitute the strongest case of any which has been presented in this report, for the reason that of the 18,000 acres inclosed by this fence about 13,000 acres were and are Government lands. Senator Warren states with reference to this pasture that he owns about five sections in townships 19 north, range 66 west, but not in the form as represented upon Exhibit C; that he has built a fence around these five sections, except along the southern line, and that he intends to inclose the whole tract. He further states that on account of an error on the plats locating the stream called Bear Creek, the north fence was constructed about a quarter of a mile north of his north line, but that as soon as the error was discovered the fence was taken down and removed a quarter of a mile farther south, so that at the present time the fence is standing entirely upon his own land and not upon Government land. He states that this fence was removed at the time that this investigation was being made by the agents of the General Land Office.

If there is a fence maintained around the lower portion of this Bear Creek pasture, which appears to be all Government land, I am of the opinion that a suit should be instituted to compel its removal in order that the lands may be open and accessible from the county road running north from Cheyenne about 3 miles westerly from these lands alleged to be inclosed. Senator Warren disclaims any interest whatsoever in this fence lying south of the lands which he claims to own. If the fence belongs to William Moffatt and other parties as indicated upon the plat, it seems to me that suit should be instituted against them for the purpose of compelling the removal of the fence, so as to throw them open to access by the general public.

I have gone over this report of Mr. Linnen with great care, for the purpose of ascertaining whether there is sufficient reliable data upon which to predicate a suit in equity, and I have reached the conclusion that the only Government lands which can be said to be unlawfully inclosed as represented by these three exhibits (A, B, and C) are the 1,100 acres represented in the Warren live stock pasture No. 1 on Exhibit B, and the 13,000 acres represented in the pasture of Warren, Moffatt, et al. on Exhibit C. Senator Warren disclaims any interest of the Warren Live Stock Co. to the fences which are represented as inclosing these lands, and there seems to me to be considerable reason for believing that his claims are true. If as Senator Warren says, and which Mr. Linnen does not dispute, there exists a fence running along the easterly side of pasture No. 1 and thereby excluding these Government lands from the Warren pasture, and such a fence has existed for a great many years, there would be little, if any, reason for claiming that the broken line of fence which is upon Government land and clearly illegal belongs to the Warren Live Stock Co., especially when you take into consideration the great size of the pasture, it being some 30,000 acres in extent.

Again, when we consider Exhibit C and the fact that the upper portion of this pasture is represented upon this plat as belonging to the Warren Live Stock Co., while the lower portion of the pasture, consisting of 13,000 acres, is Government land and apparently inclosed by the fences of William Moffatt, Van L. Gifford, and George W. Snow, I am inclined to think that it would be unwise to bring a suit against the Warren Live Stock Co. for the purpose of obtaining a decree directing the removal of the lower portion of these fences inclosing the Government land. This plat, Exhibit C, does not represent that any of the fences south of the Warren Live Stock Co.'s lands are owned or maintained by the Warren Live Stock Co. In fact, the plat represents such fences (which are the fences surrounding the Government lands) as belonging to William Moffatt, Van L. Gifford, and George W. Snow. It would, therefore, seem that if any suit is to be instituted for the purpose of opening up these lands to the general public, that the parties defendant should be Gifford, Snow, and Moffatt.

The special agent, in his report to the Secretary of the Interior, states:

"The result of said surveys shows that the Warren Live Stock Co. has 46,330 acres of Government lands unlawfully and illegally inclosed by barbed wire fences in Laramie County, Wyo., and that said company also has 1,120 acres of the public domain unlawfully inclosed by wire fences in Weld County, Colo."

It now appears from an examination of the report of the special agent that 33,000 of the 46,000 acres are in truth and in fact not inclosed but open to the general public in the manner in which I have pointed out in this letter under the heading Exhibit A. It further appears that with respect to the remaining 13,000 acres, although illegally inclosed by barbed-wire fences as shown by Exhibit C, that the fences complained of are in all probability not the fences of the Warren Live Stock Co. or any of its officers or agents. With respect to the 1,120 acres of the public domain alleged to be unlawfully inclosed by the Warren Live Stock Co. in Weld County, Colo., it appears from my review of the case in this letter under the heading Exhibit B, that the said 1,120 acres are situated outside of pasture No. 1, and that the fence complained of as inclosing this portion of the public domain in all probability is the fence of some other person or persons.

For these reasons I am of the opinion that no suit should be instituted against the Warren Live Stock Co., or its officers or agents, upon the report and the accompanying plats, as the same has been submitted by the Interior Department. I do not wish to be understood, however, as holding that the Warren Live Stock Co. has not constructed and is not now maintaining fences upon or around some portion or portions of the public domain in violation of the act of 1885. I simply mean to say that in my opinion the report which has been submitted does not contain sufficient information and data to justify this department in directing the institution of suit against the Warren Live Stock Co., and I recommend that the whole matter be referred back to the Interior Department for such further investigation as may be deemed proper and appropriate.

In conclusion, I desire to call attention to the fact that the report of the special agent charges generally that acts of violence have been committed by the agents and employees of the Warren Live Stock Co. for the purpose of frightening off and intimidating intending settlers. I have not considered this portion of the report for two reasons: First, because the report upon this matter is general and does not relate to specific instances; and, second, because the cases as presented against the Warren Live Stock Co. relate specifically to unlawful inclosures and illegal fencing.

Respectfully,

M. D. PURDY,
Assistant to the Attorney General.

Former Assistant Secretary of the Department of the Interior made a brief, which is as follows:

UNLAWFUL INCLOSURES, WYOMING.

The material points presented by the report of Special Land Inspector Linnen in the above-entitled matters, dated September 7, 1906, and the evidence filed in support thereof, may be briefly summarized as follows:

I.

That the Warren Live Stock Co. has 48,510 acres of public land unlawfully inclosed by barbed-wire fence in Laramie County, Wyo., and 1,120 acres unlawfully inclosed by wire fence in Weld County, Colo.

In support of this, see the maps and plats filed with said report, marked Exhibits "A," "B," and "C," and also the following:

(Inspector Linnen's report:) "Accompanied by Special Agent W. C. Hintze, I made a preliminary examination of conditions in the vicinity of Cheyenne, Wyo., and thereafter employed two competent surveyors, who executed surveys of the eight illegal inclosures of the said Warren Live Stock Co. I personally accompanied one of said surveyors on the ground and assisted in executing said surveys, while Special Agent Hintze accompanied the other surveyor and likewise assisted him. Thus, one or the other of us was at all times with said surveyors, personally assisting them and personally seeing and measuring all the fences so surveyed. I have the honor to inclose herewith duly certified plats of said surveys, prepared by Surveyors Sidney E. Bartlett and Charles P. Berry, who executed said surveys, which correctly show the fences of the Warren Live Stock Co., the true location of same as checked with corners of public surveys found on the ground. Said plats correctly show the land grants made to the Union Pacific Railroad Co., sections 16 and 36 (which are school lands), all State selections, and all entries of every other description made in the United States land office at Cheyenne, Wyo., and Denver, Colo., and which said plats correctly show all vacant Government lands. These plats I mark Exhibits 'A,' 'B,' and 'C.' The result of said surveys show that the Warren Live Stock Co. has 48,510 acres of Government lands unlawfully and illegally inclosed by barbed-wire fences in Laramie County, Wyo., and that said company also has 1,120 acres of the public domain unlawfully inclosed by wire fences in Weld County, Colo. * * *

"It will be observed that in one of the north pastures of the Warren Live Stock Co., designated on the plat as Warren's Horse Creek pasture, that there is about 2 miles on the east boundary thereof where the fence is not standing, but will observe that farther east are the fences of the Wilkinson inclosure, which makes a complete inclosure. Likewise, there are other short distances where the wires are removed from the posts, which are standing, but in the same direction fences of other stockmen or cross fences within the unlawful inclosure form a complete inclosure. The true location of the fences of the Warren Live Stock Co. lying to the north of Cheyenne, in the State of Wyoming, was furnished me by one Charles Thomas, of Cheyenne, Wyo., a stockman, who has ridden the range in that vicinity for the past 27 years and who is personally well acquainted with every foot of the fence and the true location thereof. To enable us to make a proper and correct survey of the fences and illegal inclosure of the said Warren Live Stock Co. I employed as driver and chainman one Elmer E. Harriman, of Cheyenne, Wyo., who had previously been in the employ of the Warren Live Stock Co. for five years, from 1901 to 1905, inclusive. During some of such period he had ridden the fences for said cattle company lying south of Cheyenne in Wyoming and in northern Colorado, and thus he was very familiar with the fences and the true location of same. He was personally present during all of the said surveys and rode or chained every foot of said fences. In order that I should be positively sure of the fences of said Warren Live Stock Co. in northern Colorado, I employed as chainman one Francis D. Mantey, who resides on a ranch near Carr, Colo., and who has lived there all of his life. He or his father, D. Mantey, was personally present during all of said surveys in northern Colorado and rode or chained every foot of said fences. They were very familiar with same and the true location thereof because of the fact that their ranch in northern Colorado is entirely surrounded by the fences and inclosures of said Warren Live Stock Co., and they have on numerous occasions complained of such unlawful inclosures. Said D. Mantey has resided in that vicinity for the last 33 years, and his son Joseph, who is 26 years of age, was born on said ranch and has resided there all of his life."

(Affidavit of Elmer E. Harriman:) "I was in the employ of the Warren Live Stock Co. for five years, from 1901 to 1905, inclusive, and during some of that period I rode the fences inclosing their pastures which lie southerly from the city of Cheyenne, Wyo., in southern Wyoming and northern Colorado. By riding around such fences and inclosures for said company to see that the said fences were standing and in good repair, and mending same if cut or down, I became well acquainted with said fences belonging to said company, and the location of same and lands inclosed within same. This knowledge and information I so possessed as to such fences and inclosures belonging to the said Warren Live Stock Co. I imparted to Inspector E. B. Linnen, and being employed by him I personally accompanied him and Surveyor Charles Berry around each and all of the fences of the said Warren Live Stock Co. lying to the south of Cheyenne, Wyo., in southern Wyoming and northern Colorado, and assisted in chaining and measuring said fences; and I certify that the surveys so made of said fences and inclosures correctly show and represent same as owned and controlled by said Warren Live Stock Co."

(Affidavit of D. Mantey:) "My name is D. Mantey; I am 59 years of age; my post-office address is Carr, Colo. I am a ranchman, residing on a ranch about 6 miles from Carr, Colo., where I have resided continuously for the past 33 years. I am very well acquainted with the lands and fences which inclose lands in this vicinity, and know the fences of the Warren Live Stock Co. in southern Wyoming and northern Colorado lying southerly from Cheyenne, Wyo. I hereby certify that on Monday, August 27, 1906, I accompanied Inspector E. B. Linnen and Surveyor Charles Berry to the lands known as the Barton pastures, about 8 miles southwest from my ranch, which is owned and controlled by the Warren Live Stock Co., and there pointed out the fences belonging to said company which incloses the lands and pasture within said inclosure which was duly surveyed. The fences were all standing, making a complete inclosure.

"I further certify that I have given to said inspector and surveyor such information and knowledge as I possessed to enable them to make a correct survey of all the fences and inclosures of said Warren Live Stock Co., lying southerly from Cheyenne, Wyo., and that my son, F. J. Mantey, accompanied them and pointed out said fences and inclosures and assisted in chaining the lengths of same, and from the information now given me as to the surveys made of such fences and inclosures so surveyed I believe the same to be correct and to show properly the fences of said Warren Live Stock Co. and the lands inclosed within same."

(Affidavit of Francis Joseph Mantey:) Francis Joseph Mantey, being first duly sworn, deposes and says: "I am 25 years of age, residing on a ranch with my parents near Carr, in Weld County, in northern Colorado, where I have resided all of my life. Our ranch is entirely surrounded by the lands inclosed by the Warren Live Stock Co., which inclosures extend north to within 2 miles of the city of Cheyenne, Wyo., and south in Colorado for several miles, and extend for miles both east and west.

"I am well acquainted with the lands in this vicinity and with the fences and inclosures of the Warren Live Stock Co., and swear that, in company with Inspector E. B. Linnen and Surveyor Charles Berry, I assisted in making a survey of the inclosures of said Warren Live Stock Co. lying south of the city of Cheyenne, Wyo., in southern Wyoming and northern Colorado; that I pointed out the fences of said company and assisted in chaining around the fences, which we followed and chained completely around; and I certify that the fences surveyed are those of the said Warren Live Stock Co."

(Affidavit of Van L. Gilford:) "My name is Van L. Gilford; 44 years of age; post-office address, Goldsmith, Wyo. I am a rachman, and have lived in the northern part of Laramie County, Wyo., for the past 20 years. I am well acquainted with the country from here to the Colorado line. I know that the whole country, practically, from 30 miles north of Cheyenne, Wyo., to and south of the Colorado State line, is fenced. I know that the Warren Live Stock Co. have fences in my vicinity, in T. 19 N., R. 66 W., Wyoming, and that they have lands fenced southerly clear to Colorado. * * * The fences of the Warren Live Stock Co. and other big stockmen in this vicinity have been built now for five years, and some of the southern pastures of the said Warren Live Stock Co. have been fenced for the past 20 years. I have marked on a township plat for you the lines of the fences of said Warren Live Stock Co. in this vicinity north of my ranch."

(Affidavit of Horace E. Adams:) "The Warren Live Stock Co., of which Senator Warren is principal owner, I understand, have fenced large tracts of Government lands lying south, west, and east of Cheyenne, Wyo., portions of which I know. I believe same to extend from Granite Canyon to and south of the Colorado line and east to the west boundary of Nebraska." (Corroborated by H. S. Hall, Mrs. W. A. Simmons, and John L. Morgan.)

(Deposition of former Special Agent W. E. Jenison:) "I want to further say that about the time I made examination of the first pasture of the Warren Live Stock Co., down on the Colorado line, I was called up by telephone one morning by Mr. Gleason, manager for the company, who said he wanted to see me. I told him I would be down at the office of the company at 9 o'clock, and got there about three minutes after that hour, but found Mr. Gleason absent. I went away and came back in 15 or 20 minutes and found Mr. Gleason there, in company with Mr. Charles Burdick, who, I then learned for the first time, was attorney for the Warren Live Stock Co., and a stockholder in said company. Mr. Burdick said: 'When and where are you going to examine our fences?' I said: 'Just as soon as I can get around to it.' He said:

'Where are you going to examine them?' I said: 'I guess I will take this pasture first,' mentioning a given pasture. Mr. Burdick threw up his arms and said: 'Oh, no; we have public lands inclosed there.' Then I said: 'Well, I guess I will examine next this pasture,' mentioning another pasture, and he again threw up his arms and exclaimed: 'Oh, no; we have public lands inclosed there.' I finally indicated the Horse Creek pasture, and in each instance he threw up his arms and exclaimed: 'We have public lands inclosed there,' practically admitting that every pasture of the Warren Live Stock Co. I mentioned had public lands unlawfully inclosed. I did that in order to draw him out and see what he had to say in regard to the matter. I finally told him, without saying when I intended to do it, that I would take the matter up just as soon as I could and make my report upon it. I intended to take each pasture separately and report upon them separately just as soon as I could. For reasons contained in my statement herewith I was unable to do so. But in the conversation just narrated Mr. Burdick practically admitted that all the pastures of the Warren Live Stock Co. that I mentioned, both north and south of Cheyenne, had public lands unlawfully inclosed. The thing that impressed this conversation upon my mind was the fact that a short time previously thereto, in a conversation had with Mr. Burdick in the local land office, he had declared that all the illegal fencing of the Warren Live Stock Co. was down. * * *

"Q. In your letter dated Cheyenne, Wyo., January 3, 1906, addressed to the Commissioner of the General Land Office, among other things you state, referring to Senator Warren: 'He owns a great deal of land within the railroad limits and has bought a lot of railroad lands. In some cases, fencing his own lands out in sections, he incidentally incloses Government lands." Is that true?—A. Yes.

"Q. Did Senator Warren state that to you?—A. Yes; that he 'incidentally' inclosed Government lands. His contention was that if, in fencing lands which he had purchased from the Union Pacific Railroad Co., he incidentally inclosed Government sections and Government lands within his fence, the fences, when on the lands which he had purchased from the railroad company, were legal and that I could not make him remove them. He thus admitted the inclosure of Government lands by fencing the lands he had purchased from the Union Pacific Railroad Co.

"Q. Have you any further statement you desire to make?—A. When I had the conversation with Senator Warren, he stated that some of his pastures contained less than 160 acres of Government lands, and that I could not make him take his fences down in those pastures. I understood these pastures to be small inclosures, made by division fences within the large pastures. * * *

"Q. During the time you were stationed at Cheyenne, did you ever learn of any unlawful inclosures of public land being maintained in Wyoming?—A. Yes, sir.

"Q. State who were maintaining those unlawful inclosures.—A. There was a great number of unlawful inclosures all over the State.

"Q. Were there any in the immediate vicinity of Cheyenne?—A. Yes; the Warren Live Stock Co., Wilkinson Bros., Bristol, A. T. McLaughlin, Harry Farthing, Harry Fullerton, Thomas Bros., Donald Clark, Schwartsky, Nylen & Pollock, and numerous others.

"Q. Did you serve notice on any of the parties whom you have named?—A. I served notice on all of them.

"Q. To remove their fences?—A. To remove their fences."

January 8, 1906, Special Agent Jenison reported to the Commissioner of the General Land Office that he had had a conference with Senator Warren, and that Senator Warren had stated "that he had commenced to remove his fences prior to the notice given, and that he had removed a great many miles of fencing." The agent also stated in said communication that he had learned through others that Senator Warren was removing his fences as fast as possible. (This tends to show that Senator Warren recognized that he had some illegal fences.)

II.

That said Warren Live Stock Co. procured its employees to acquire title to public lands under the desert-land law for the benefit of said company and not for the benefit of the entrymen.

(Inspector Linnen's report:) "That persons in the employ of said company have filed on lands within its illegal inclosures for said company at the request of its general manager. W. W. Gleason, and that on some of the tracts so filed upon proofs have been made without complying with the public-land laws, and the lands were thereafter deeded to said company."

(Affidavit of Elmer E. Harriman:) "I further testify that during the period that I was in the employ of said Warren Live Stock Co., about the spring of 1903, I filed on lands in the vicinity of what is known as the Upper Duck ranch, in southern Wyoming, for said Warren Live Stock Co. I filed on said lands, the description of which I do not now recollect, for said company at the solicitation and request of one W. W. Gleason, general manager for said Warren Live Stock Co. I filed on a half section of land under the desert-land act, to hold the same for said Warren Live Stock Co., as per its general manager's request, and never received any compensation for same. When he, W. W. Gleason, general manager, asked me to file on said lands for said company I was in the office of said Warren Live Stock Co., in the city of Cheyenne, Wyo. He, the said Gleason, general manager for said company, had the filing papers for said lands all made out and I signed the same in said office at his request and for said company. When I signed said papers I was sworn to same by Teddy Voight, the bookkeeper for said Warren Live Stock Co., whom I believe was a notary public. I was sworn in the office of said Warren Live Stock Co. by its said bookkeeper. I did not know the lands so filed upon by me for said company. I did not go to the United States land office in Cheyenne, Wyo., to file said papers, and did not pay any fees or money on account of such filing I made to any person.

"If the filing was placed of record in the Cheyenne, Wyo., land office and any fees paid to the receiver of said United States land office for the United States, the same must have been so filed, and the moneys and fees paid by the said W. W. Gleason, general manager for the Warren Live Stock Co.

"I know that other employees of the said Warren Live Stock Co. have filed upon and held lands for said company at its request through its said manager, W. W. Gleason. One of such employees of said company who filed upon and held Government lands for it is George Raynes, now in the employ of said company. One Edward Hempstone also filed upon lands for said company. One William E. Shelton also filed upon land for said company. Other employees have filed on lands for said company, made proof on same, and sold the lands at once to said Warren Live Stock Co. The names of some of such persons are as follows: George Richardson, James McGovern, and John Rider. None of these persons I believe ever resided on the lands they filed and proved up on or complied with the law.

"I never saw the lands I filed upon to my knowledge. I did not know just where it was and never made any attempt to comply with the law. I simply filed upon said land, as herein stated, for said company to hold the land for them at the request of its general manager, W. W. Gleason." (The above is corroborated by records of the General Land Office as to James McGovern and John W. Rider, said records showing that homestead entries were made and final proofs submitted thereon by said parties for lands within the inclosure of the Warren Live Stock Co., as shown on said map.)

The records of the local land office at Cheyenne, Wyo., show that since the date of Inspector Linnen's report, namely, on October 10, 1906, Fred E Warren, son of Senator Warren, and William W. Gleason, manager of the Warren Live Stock Co., made desert-land entries for tracts of land within the inclosure of the Warren Live Stock Co., indicated on Exhibit A.

III.

That the Warren Live Stock Co. has by force, threats, and intimidation compelled persons who filed on public lands within its inclosures to abandon the same.

(Inspector Linnen's report:) "That said Warren Live Stock Co., through its agents and employees, have on numerous occasions by force, threats, and intimidation harassed and forced settlers on the public domain, who had filed within its pastures, to abandon same or to sell out to said company."

(Affidavit of D. W. Elliott:) "One of the persons thus intimidated by the Warren Live Stock Co. and its agents was Elizabeth Thomas. Another was James E. Smith, both of Cheyenne, Wyo. I conducted their cases. Also Mrs. Elizabeth McKeever, of Cheyenne. I have also heard of a number of other persons, who told me of same. These annoyances by said company and its agents consisted of the tearing down of the entrymen's fences, breaking of windows, turning in cattle to eat up their crops, carrying away their well buckets, and in one case setting fire to a house. Everything was done to prevent the settlers from living upon the land and raising a crop."

(Affidavit of Alex Kirkbride:) "About 15 or 16 years ago the Warren Live Stock Co. fenced the country from here to Pole Creek lying to the south, and Anthony Wilkinson and his brother John fenced a large scope of country lying to the south and east. Other stockmen fenced the country, until now it is practically all under fence. All of these inclosures so fenced and maintained by these stockmen contain Government land, and settlers have been hindered and prevented from locating within such inclosures. The few settlers who did locate within such inclosures have been harassed, fenced in, had no range for their stock, or water, and everything has been done to make it uncomfortable for them and drive them out. There is at present no small settler between my place and Cheyenne, Wyo., such lands being all inclosed and controlled by the large outfits."

(Affidavit of Mrs. D. Mantey:) "Persons who have filed within the Warren Live Stock Co.'s pastures have been persecuted by said company and its agents and employees and have been run out and their stock run off the land; their fences have been cut; their pastures eat out by the company's cattle and everything has been done to make it unpleasant for settlers, and they have been compelled to sell out or move out. There are not now as many settlers in this vicinity as there were 20 years ago. They were compelled to sell out or move out of the country by said company. Our lands are entirely surrounded by the fences, lands, and unlawful inclosures of the Warren Live Stock Co., which fences they have maintained for the past 20 or more years." (Corroborated by affidavits of Mrs. Mantey's husband and son.)

IV.

That the fences of the Warren Live Stock Co. and which unlawfully inclose public lands have been standing for from 5 to 18 years and more, and were still standing at the date of said report:

(Inspector Linnen's report:) "That their unlawful fences inclosing the public domain have been standing for upward of 18 years."

(Affidavit of Mrs. D. Mantey:) "This company (the Warren Live Stock Co.) has had large tracts of the public domain illegally inclosed for the past 18 years, both in Colorado and Wyoming."

(Affidavit of D. W. Elliott:) "One of the largest owners of fences inclosing the Government lands illegally is the Warren Live Stock Co., of which Senator Francis E. Warren is a large owner. Hersig Bros. (Charles and Fred) are large owners of illegal fences which inclose Government lands. The Swan Land & Cattle Co. also maintain large unlawful inclosures. Mr. Cole has some illegal fences. Also others. Most of the lands are close to Cheyenne, so fenced. Some are out 60 or 75 miles. Most of these fences unlawfully inclosing Government lands have been maintained for many, 20 or more, years."

(Affidavit of Van L. Gilford:) "The fences of the Warren Live Stock Co. and other big stockmen in this vicinity have been built now for 5 years, and some of the southern pastures of said Warren Live Stock Co. have been fenced for the past 20 years."

(Affidavit of Francis Joseph Mantey:) "I further certify that said fences surveyed have been standing for many years, some as long as 18 years."

See also affidavit of Alex Kirkbride, page 12.

V.

That within 6 months prior to the date of Inspector Linnen's report of September 7, 1906, a large number of State selections have been made within the unlawful inclosures of the Warren Live Stock Co., which selections have not yet been approved by the Secretary of the Interior at the date of said report, and that said State selections cover Government lands that have been illegally inclosed by said company for the past 20 years:

(Inspector Linnen's report:) "In this connection, it is pertinent to state that a large number of State selections have recently been made (within the past 6 months) within the unlawful inclosure of the Warren Live Stock Co., which selections are not yet approved by your office. Said State selections cover Government lands that had been illegally inclosed by said company for the past 20 years. * * * On the date, however, when Special Agent in Charge N. J. O'Brien reported there were no illegal inclosures in this State by said company the said Warren Live Stock Co. had then 15,940 acres of Government lands illegally inclosed by wire fences.

"On April 14, and May 1, 1906, said Warren Live Stock Co., through the State of Colorado, made selections of 14,820 acres of Government lands, which said selections are still unapproved by your office.

"Likewise, thousands of acres of Government lands have been selected for the said Warren Live Stock Co. in Laramie County, lying south of Cheyenne, Wyo., by the State Land Board of Wyoming, within the past six months, which selections are still unapproved, and which prior to six months or less ago were illegally inclosed, and had been so illegally inclosed by the said Warren Live Stock Co. for the past 20 or more years." (This is corroborated by the records of the General Land Office as to the time, location, and extent of said selections.)

VI.

That within the current calendar year two special agents of the General Land Office, namely, W. E. Jenison and N. J. O'Brien, have reported to the Commissioner of the General Land Office that the Warren Live Stock Co. was found engaged in removing its fencing from the public lands in Wyoming, and that an examination of the "former" inclosure of caid company in the State of Colorado had been made, and the same found to be wholly removed from the public domain, and that said statements were untrue:

(Inspector Linnen's report: "Former Special Agent W. E. Jenison, stationed at this point (Cheyenne) for four years, under date of January 6, 1906, reported to the Commissioner of the General Land Office 'that said company was found engaged in removing their fencing from the public lands in the State of Wyoming'; this in reference to the illegal inclosure of the Warren Live Stock Co. Under date of February 15, 1906, N. J. O'Brien, special agent in charge, Denver, Colo., reported to the Commissioner of the General Land Office that he had 'made an examination of the former inclosure of the Warren Live Stock Co. in the State of Colorado, and found the same to be wholly removed from the public domain.' Both of said statements were untrue, as said fences were then and are now still standing, as shown by correct surveys and plats herewith transmitted."

See Jenison's letter of February 10, 1906, to the Commissioner of the General Land Office, in which he said: "My conclusion is, there is no unlawful inclosure so far as Wyoming is concerned."

See Jenison's explanation of above in his deposition, pages 9 and 10.

(Affidavit of Mrs. D. Mantey:) "I am advised that said Special Agent O'Brien has reported to the Commissioner of the General Land Office that he visited the lands in northern Colorado and found the fences of the said Warren Live Stock Co. removed which had inclosed Government lands. This is a false statement, and if the said Special Agent O'Brien was ever in this vicinity, I or none of my folks or any other person in this vicinity has knowledge of the same, and we would, surely some of us, have heard of same. Likewise if Special Agent Jenison has reported that the fences of said company were removed in Wyoming, the same is false, as the said company has now and for the past 20 or more years have had thousands of acres of Government lands illegally inclosed in both Colorado and Wyoming."

See also Special Agent O'Brien's letter of February 17, 1906, to the Commissioner of the General Land Office.

Deposition of W. E. Jenison:

"Q. On February 10, 1906, you made your report to the Commissioner of the General Land Office relative to the investigation of the Warren inclosure, to which you referred to moment ago—down on the Colorado line. The closing paragraph of that letter states: 'My conclusion is, there is no unlawful inclosure so far as Wyoming is concerned.' I will ask you what you meant by that statement?—A. I meant only as regards that pasture along the Colorado line, as indicated by the plat filed with my report. I meant that portion I first examined, which is about nine sections of land in the vicinity of the Home or Terry ranch.

"Q. You did not intend that to apply to the other inclosures?—A. No; just those I examined."

VII.

That the Warren Live Stock Co. and some 35 or 36 other individuals and corporations are maintaining unlawful inclosures in Laramie County, Wyo., of approximately half a million acres of public land, and which embraces an area of country extending 30 miles north from Cheyenne, about 40 miles east to the west boundary line of Nebraska and about 10 miles south to the northern boundary of Colorado and 24 miles west from Cheyenne.

See Exhibit D, filed with Inspector Linnen's report of September 7, 1906.

(Inspector Linnen's report:) "The true location of the fence of the Warren Live Stock Co., lying to the north of Cheyenne, in the State of Wyoming, was furnished me by one Charles Thomas, of Cheyenne, Wyo., a stockman who had ridden the range in that vicinity for the past 27 years, and who is personally well acquainted with every foot of the fences and the true location thereof. Likewise, he furnished me with considerable of the data and information to enable me to properly show the boundaries and fences of the various stockmen in Laramie County, Wyo., he being personally familiar with each and every pasture and the true location of the fences of the various stockmen, as shown by plat, Exhibit D, herewith, which is approximately correct as to all of the inclosures other than that of the Warren Live Stock Co., which is a true and correct survey. I believe that the plat, Exhibit D, correctly shows the boundaries and fences of the other stockmen as thereon marked in distinctive colors, and the areas illegally inclosed by each stockman will be found to be practically correct."

The true location of the fences of the north pasture was ascertained by Inspector Linnen from the following persons: George B. Allen, at Johnsons Road ranch, owned by Warren; Mr. Boice, manager of the Arbuckle ranch; Van L. Gilford; and Alex Kirkbride.

"The plat herewith, Exhibit D, shows approximately half a million acres of Government lands illegally inclosed. If we did but take the time, we could easily have shown double this amount within Laramie County, Wyo., to say nothing of other counties which are largely fenced. * * *

"While engaged in making this investigation and these surveys we came in contact with many other unlawful inclosures of Government lands, and from reliable sources secured evidence and data which enabled us to properly plat the fences and unlawful inclosures of numerous other stockmen in Laramie County, Wyo. These unlawful inclosures are properly shown on a large map of the southern portion of Laramie County, Wyo., herewith inclosed and marked 'Exhibit D.' Said map shows in distinctive colors the fences and unlawful inclosures of numerous other stockmen, shows all grants to railroad companies, all school lands, State selections, and entries of every description, as taken from the records of the United States land office at Cheyenne, Wyo., and correctly shows the vacant Government lands illegally inclosed within the fences of each stockman."

(Affidavit of Horace E. Adams:) "Mr. Homer C. Roberts, of Granite Canyon, Wyo., has sec. 12, T. 13 N., R. 70 W., Wyoming, illegally fenced; also one-half of sec. 8, T. 13 N., R. 69 W. Mr. T. D. Holt, of Hecla, Wyo., has sec. 6, T. 13 N., R. 69 W., Wyoming, and other Government lands illegally inclosed. Mrs. Martha Ferguson and sons, Hecla, Wyo., have secs. 24, 14, portions of secs. 34, 28, in T. 14 N., R. 70 W., Wyoming, illegally inclosed by a wire fence; also secs. 13, 25, 15, 35, and 23, mineral lands, and sec. 1, T. 13 N., R. 70 W., also illegally fenced.

"Mr. Van Tassel, Cheyenne, Wyo., has a large ranch northwest of Hecla with many sections of Government lands inclosed.

"Mr. Thomas McGee, Jesse Cole, and Hersig Bros. control a majority of the land and pastures lying between Hecla and Cheyenne, and have large tracts of Government lands illegally inclosed by fence.

"The Warren Live Stock Co., of which Senator Warren is principal owner, I understand, have fenced large tracts of Government lands lying south, west, and east of Cheyenne, Wyo., portions of which I know. I believe same to extend from Granite Canyon to and south of the Colorado line and east to the west boundary of Nebraska." (Corroborated by the statements of H. S. Hall, Mrs. W. A. Simmons, and John L. Morgan.)

(Affidavit of Mrs. D. Mantey:) "It is also a fact, generally well known to all citizens residing in Cheyenne, Wyo., and vicinity and to persons residing in northern Colorado, that practically the whole country and all of the Government lands lying for many miles in all directions from the city of Cheyenne, Wyo., are fenced by stockmen. Some of these who have Government lands fenced are as follows: R. W. Van Tassel, Cheyenne, Wyo.; Tom O'Neil, Cheyenne, Wyo.; Ora Hailey, Laramie, Wyo.; Albert Bristol, Little Bear, Wyo.; Hersig brothers, Cheyenne, Wyo.; Perry Williams, Cheyenne, Wyo., and many others." (Corroborated by the affidavits of her husband and son.)

(Affidavit of Van L. Gilford:) "I am a ranchman and have lived in the northern part of Laramie County for the past 20 years. I am well acquainted with the country from here to the Colorado line. I know that the whole country, practically, from 30 miles south of Cheyenne, Wyo., to and south of the Colorado State line is fenced."

(Affidavit of W. B. Pugh, special agent, General Land Office:) "Practically the whole of Laramie and Albany Counties lying within the 40-mile railroad limits has been inclosed and is now being used by stockmen for cattle pastures, being fenced with wire fences or buck and pole fences. Within the area above mentioned these inclosures have been effected by means of the fences erected on the odd sections granted to the Union Pacific Railroad Co. largely, thus effectually inclosing the lands which can be thus surrounded. On August 27 I submitted a report illustrating the manner in which these inclosures have been effected to the Commissioner of the General Land Office."

(Affidavit of D. W. Elliott:) "I have met with the opposition of the Warren Live Stock Co., the Gilchrist estate, Albert W. Bristol, Albert H. Pierson, ranchmen, all of whom have Government lands illegally inclosed. * * * Generally speaking, most all of the lands in the vicinity of Cheyenne, Wyo., are fenced, and most all ranches so fenced contain Government land. * * * One of the largest owners of fences inclosing the Government lands illegally is the Warren Live Stock Co., of which Senator Francis E. Warren is a large owner. Hersig brothers (Charles and Fred) are large owners of illegal fances which inclose Government land."

(Affidavit of Alexander Kirkbride:) "When I first settled here all of the country between my place and Cheyenne, except the Warren Pole Creek pasture and the Arbuckle pasture, was vacant and not fenced, and was public range. About 15 or 16 years ago the Warren Live Stock Co. fenced the country from here to Pole Creek lying to the south, and Anthony Wilkinson and his brother John fenced a large scope of country lying to the south and east. Other stockmen fenced the country until now it is practically all under fence. All of these inclosures so fenced and maintained by these stockmen contain Government land."

The above and foregoing statements are also corroborated by the statements of Mr. Boice, George B. Allen, and Charles Thomas, whose evidence is not in the record.

"Q. To what extent, Mr. Jenison, if at all, was the country in the vicinity of Cheyenne unlawfully inclosed?—A. From my observation, practically the whole country around Cheyenne was inclosed.

"Q. I am showing you a map filed by Special Land Inspector Linnen with a report made by him to the Secretary of the Interior, marked 'Exhibit D,' and will ask you to look at that map and state how many of the inclosures indicated thereon came to your knowledge, and whether, during your stay at Cheyenne, you found that sort of a condition to exist?—A. The only one that came to my personal knowledge, or that I had seen, was the pasture of the Warren Live Stock Co. I have been along the Van Tassel pasture. I never looked up the lands within to find out about them, because there was never any complaint against Van Tassel.

"Q. At the time you observed this were you engaged in the investigation of some other matters?—A. I was engaged in the investigation of the Bristol case, the McLaughlin pasture, and the Smith pasture.

"Q. I will ask you to state whether or not the general condition indicated on this map did or did not exist?—A. It did." (From deposition of W. E. Jenison.)

VIII.

That persons who have settled upon public lands within the above-mentioned unlawful inclosures have been harassed and driven off and compelled to abandon their claims by said stockmen, who maintain said unlawful inclosures, and their agents and employees.

(Inspector Linnen's report:) "Persons who have settled on lands within said unlawful inclosures have been harassed by said stockmen and their employees and agents. Their stock has been driven off, their pastures eaten out by the stockmen's sheep and cattle, their fences cut, windows broken in their houses; they have been threatened and intimidated, and everything has been done by the owners of said illegal fences and their agents and employees to make it uncomfortable and a hardship for such settlers who filed within their pastures to continue to live there. They have forced them to abandon the lands so filed upon or to sell out."

(Affidavit of D. W. Elliott:) "These companies and persons and their employees and agents have on numerous occasions used threats, violence, and force, and intimidated settlers, or those who would have become bona fide settlers, preventing them from settling upon the lands they had filed upon which were included and embraced within their fences and illegal inclosures, which embraced their lands and other lands which was a portion of the public domain."

(Affidavit of Alex Kirkbride:) "All of these inclosures so fenced and maintained by these stockmen contain Government lands, and settlers have been hindered and prevented from locating within such inclosures. The few settlers who did locate within such inclosures have been harassed, fenced in, had no range for their stock or water, and everything has been done to make it uncomfortable for them and drive them out. There is at present no small settler between my place (31 miles north of Cheyenne) and Cheyenne, Wyo., such lands being all inclosed and controlled by the large outfits."

(Affidavit of Van L. Gilford:) "The Warren Live Stock Co. on several occasions have driven their bands of sheep to lands in my vicinity and have eaten out all of the feed, so that there was none left for my stock. I have known of their eating out several other stockmen."

See also affidavit of Mrs. D. Mantey, corroborated by the affidavits of her husband and son, under No. III herewith.

IX.

That the Gilchrist estate, of which Timothy F. Burke, United States attorney for Wyoming, is attorney and administrator, is maintaining an unlawful inclosure of public lands:

(Inspector Linnen's report:) "The United States attorney, Timothy F. Burke, is the administrator of the Gilchrist estate, which has lands illegally inclosed. It is charged that he collects an annual rental from such lands for said estate."

(Affidavit of D. W. Elliott:) "He (Burke) and Mrs. Gilchrist, his client, can not but know of the illegal fencing of Government lands by the Gilchrist estate, which has been unlawfully fenced for the past 20 years, and I am informed they collect and receive a yearly rental of $1,000 per annum from lands leased, most of which, or a portion of which, is Government lands."

(Affidavit of Inspector Linnen:) "These lands, with other lands and Government land, is inclosed within a barbed-wire fence owned and maintained by Mrs. Gilchrist and the Gilchrist estate, for whom, I understand, Mr. Timothy F. Burke, United States attorney for Wyoming, is attorney and administrator. Said unlawful inclosure embracing these lands and Government land in said vicinity has been maintained by this claimant, I am informed, for some 15 or 20 years, and that the claimant is now receiving a yearly rental from such pasture, which incloses Government land, her business being transacted by her attorney, Burke, who can not but have knowledge of these facts."

(Affidavit of Horace E. Adams:) "The whole of said section 8, together with practically all of section 18, and other Government lands, are inclosed illegally by a barbed-wire fence owned and maintained by Mrs. Gilchrist and the Gilchrist estate, of which one Timothy F. Burke, United States district attorney for Wyoming, located at Cheyenne, Wyo., is the administrator and attorney for said Gilchrist estate." (Corroborated by H. S. Hall, Mrs. W. A. Simmons, and John L. Morgan.)

X.

That Mrs. Mary Gilchrist made a timber and stone entry fraudulently within the Gilchrist inclosure:

(Inspector Linnen's report:) "He (Burke) is also the attorney for Mrs. Mary Gilchrist, who made a fraudulent timber and stone proof on lands in sec. 18, T. 14 N., R. 69 W., Wyoming, and when protest against the same was offered, he, the said United States Attorney Burke, made the following statement in the presence of Horace E. Adams, Hecla, Wyo., and D. W. Elliott, attorney, Cheyenne, Wyo.: 'Mrs. Gilchrist can not commit a fraud on the Government by proving up on said land. She pays $2.50 per acre for said land and that is all it is worth; and so she can not commit any fraud on the Government by proving it up.'"

(Inspector Linnen's affidavit:) "That on August 14, 1906, in company with one Horace E. Adams, postmaster of Hecla, Wyo., I made a personal inspection and examination of the N. ½ of the S. ½ of sec. 18, T. 14 N., R. 69 W., Wyoming, same being the timber and stone entry of Mrs. Mary Gilchrist, who made final proof on same in the Cheyenne land office during the present year. Said tract of land is absolutely devoid of any timber of any character whatever; the same is agricultural and grazing lands, comprised of valley and table lands; along the rim of the valley conglomerate rocks are scattered in patches. * * * Said tract being absolutely devoid of any timber or stone other than conglomerate rocks, the same was not honestly taken and proved up on by the claimant as a timber and stone claim, but is taken solely for grazing and agricultural purposes. * * * This timber and stone proof is false and fraudulent."

(Affidavit of H. E. Adams:) "Mrs. Mary Gilchrist, who resides at Cheyenne, Wyo., during the present year (1906), made entry and final proof on the N. ½ of the S. ½ of sec. 18, T. 14 N., R. 69 W., Wyoming, as a timber and stone claim. Said land has no timber on same and no stone suitable for building purposes and is agricultural land, and has been used by such claimant for ranch purposes for the past 20 years. * * * The evidence sworn to by Mrs. Mary Gilchrist in the proof on the said timber and stone entry was false and is perjury in many particulars. I protested said entry and proof of said timber and stone claim of Mrs. Mary Gilchrist on the ground of its being agricultural and not timber or stone lands and met with the opposition of United States Attorney Timothy Burke, as attorney for Mrs. Gilchrist, who, among other things, called me to one side and said to me: 'Mrs. Gilchrist has paid $2.50 per acre for said land. That is all the land is worth and it can't be fraud against the Government to pay for it all the land is worth.'" (Corroborated by H. S. Hall, Mrs. W. A. Simmons, and John L. Morgan.)

(Affidavit of D. W. Elliott:) "Thereafter Mrs. Mary Gilchrist made T. & S. entry and proof on said land, which I am advised is agricultural and grazing land and devoid of any timber or any stone other than conglomerate rocks of no value whatever. I acted as attorney for Horace E. Adams, who protested said proof, and I overheard Mrs. Gilchrist's attorney, United States Attorney T. F. Burke, say to said Adams: 'Mrs. Gilchrist can not commit a fraud on the Government by proving up on said land. She has paid $2.50 per acre for said land and that is all that it is worth; and so she can not commit any fraud on the Government by proving it up.'"

XI.

That unlawful inclosures of public lands are being maintained in Crook and Natrona Counties, and that the present governor of the State has public lands illegally fenced in Natrona County:

(Inspector Linnen's report:) "I have also evidence which shows conclusively that the Government lands in Crook, Weston, and Natrona Counties are largely covered with huge networks of illegal fences. * * * The affidavit of Special Agent Pugh shows that B. B. Brooks, the present governor of the State of Wyoming, has Government lands illegally inclosed in Natrona County in the vicinity of Casper, Wyo."

(Affidavit of Special Agent Pugh:) "From reliable information I have ascertained that large illegal inclosures exist in Natrona County, Wyo., and territory adjacent, among those having such unlawful inclosures being B. B. Brooks, the present governor of the State of Wyoming. I contemplate making an early investigation of the said unlawful inclosures and lands in the vicinity."

(Affidavit of Special Agent Hintze:) "In pursuance of investigation, I had occasion to cross and recross the county of Crook in northeast part of the State, and found practically the whole country one huge network of illegal fences, one party fencing to his neighbor, and so on. The stage road from Moorcroft to Sundance, in said county, is simply a lane between barbed-wire fences, though such road is nearly all on Government land. Farther up toward the Montana line the pastures take the entire country, they fencing across the roads and completely inclosing the vicinity."

XII.

That it would be utterly useless to undertake to correct the conditions shown to exist in Wyoming so long as Timothy F. Burke is United States attorney for that State.

(Inspector Linnen's report:) "There is at this point a strong coterie of politicians, with Senator F. E. Warren at its head. This combination controls the Federal officeholders. It seems hardly likely that honest prosecutions can be had with the present machinery in this State, and I believe it will be found as necessary to make radical changes here as was the case in the States of Oregon and Nebraska before results favorable to the Government can be accomplished. I believe a very honest and competent special attorney should be stationed here and every safeguard thrown around him. Conditions in this State would seem to warrant a vigorous campaign. The affidavit of Special Agent W. B. Pugh, who has but very recently been stationed at this point, shows that he has no confidence in securing honest prosecutions and honest cooperation on the part of United States Attorney T. F. Burke. Letters heretofore addressed to you by Special Agent W. C. Hintze are to the same effect. This is also the opinion of P. R. Wadsworth, inspector of land offices and formerly special agent in charge at Rapid City, S. Dak. Personally I have never met this gentleman, but from all information I have been able to secure in this State I am inclined to believe that their judgment is correct."

(Affidavit of Special Agent Pugh:) "I have had two or three interviews with United States Attorney T. F. Burke since my arrival here concerning the unclosed cases pending in the United States district court of Wyoming, including unlawful inclosures of public lands. While in each of the said interviews Attorney Burke gave me verbal assurance of his willingness to cooperate with me, yet I left his office on each occasion with the impression that he did not regard offenses involving the unlawful inclosure of public lands as anything very serious, and that he would not bring to the prosecution of such cases as might be presented by me any very great amount of zeal. This impression has been strengthened and confirmed by information imparted to me from reliable sources as to Mr. Burke's conduct and attitude in and toward cases of this character in which he has heretofore represented the Government."

(Affidavit of W. E. Jackson, forest supervisor:) "My name is W. E. Jackson. I am 63 years of age and am forest supervisor of the Big Horn Forest Reserve, in the State of Wyoming, and have held such position for the past eight years. During such period I have on numerous occasions presented cases and evidence to United States District Attorney Burke at Cheyenne, Wyo., to get prosecutions for timber trespass and for stock trespass within said forest reserve. He treated such matters lightly, and I never could get him to act in such cases. If he was pressed to bring suits on the evidence I furnished he would become technical and ask for evidence that could not be procured. When I appeared before the various terms of the grand jury, with witnesses, to attempt to get indictments for timber and stock trespass, the said United States Attorney Burke, would not let the witnesses who appeared before the grand jury give the positive evidence they attempted to give, but would interfere with their giving same and stop them when attempting to tell same to the grand jury, and would tell them, 'Now, that's enough, etc.' and would interfere and prevent their giving the evidence to the grand jury on which I could have secured indictments. His action has always been to delay and hinder and prevent the bringing of prosecutions and to prevent the securing of indictments.

By reason of his attitude and the way he treated the evidence and matters that I had presented to said District Attorney Burke, I became convinced that I could get no prosecutions for the Government and could not expect any honest action from said District Attorney Burke.

The matters that I presented were for timber trespass and stock trespass and were in the best interests of the Government and should have been prosecuted in the best interests of the Government and would have resulted in securing moneys for the Government on account of timber trespass and served as a lesson to other offenders and would have but been the carrying out of the instructions and orders of the Government and my superior officers, and would have prevented others from trespassing and taking timber within said forest reserve, as they did later do, by reason of the ones who had formerly committed such offenses not having been prosecuted. My post-office address is Big Horn, Sheridan County, Wyo."

(Deposition of W. E. Jenison:) "With relation to United States District Attorney Burke, I desire to further state that, after complaint was filed with him by myself or some other person, complaining as to unlawful inclosure, it was his practice to write to the persons complained of, both before and after suit was instituted, giving them information as to such complaint, opportunities to make explanations, or remove their fences, and his action seemed to be in favor of the defendants rather than as prosecuting the cases in the interests of the Government. * * *

"I never could get said District Attorney Burke to take any action in timber trespass cases wherein the said Burlington Railroad was interested. On one occasion I was ordered by letter received from the Assistant Commissioner of the General Land Office to deliver a copy of my report on a timber trespass case to the president of the Burlington road, George B. Harris, Chicago, Ill., said railroad company being the party in interest.

"In the Noblet and Stoner timber trespass case that occurred over in the neighborhood of Cokeville, Wyo., in 1903, I seized about 16,000 pieces of timber cut by the trespassers. In 1904 a portion of it was stolen by a man named A. T. McLaughlin. I had ample evidence to prove the theft and furnished it to Mr. Burke, with request to prosecute the case, but he never did anything with it. I also submitted a proposition of two men to purchase the timber that was not stolen to the Commissioner of the General Land Office, and requested authority to sell, which was never granted. The last I heard of the timber it was rotting on the ground. * * *

"It was not my practice to investigate illegal inclosures except when complaint was entered, in accordance with what I believed to be instructions of the commissioner as contained in his circular.

"During the four years that I was special agent in Wyoming I could only get District Attorney Burke to bring one action in a timber trespass case, and that was involving a man who lived outside of the State of Wyoming. I never received any action at his hands which resulted in the removal of fences unlawfully inclosing the public domain, his action always being to hinder and delay.

"I further testify that when I appeared before the grand jury to give evidence in timber trespass case, said District Attorney Burke would refuse to allow me to present all the evidence which I had before the grand jury in a proper manner. He would say, when I wanted to present further evidence, or show the members of the grand jury a map, 'Now, that is enough, Jenison; go right out'; this when I would be attempting to show photographs or a map and present further evidence before the grand jury. * * *

"On September 30, 1904, I filed the affidavit of one Charles Smith against the unlawful inclosure of A. W. Bristol. District Attorney Burke rejected the same some months later. On December 30, 1904, I again filed an affidavit of said Smith, which I had read to said District Attorney Burke, who stated, 'I do not see any objections to it.' Mr. H. B. Carpenter, of Cheyenne, was present at the time. Some months later he rejected that affidavit. In June, 1905, I went to said District Attorney Burke and asked him to make me an affidavit to file in said case which he would hold to be sufficient, and he then stated that he was going away on a vacation and did not have time. Subsequently, during September, 1905, he prepared an affidavit in said case for me to sign, which I could not sign because he made the same exceedingly technical, stating in it that said Bristol had erected and constructed the fence and that none of the lands included within the inclosure complained of were held under color of title, etc. Later I filed an affidavit, which was executed by a man named Kelley. No final action in the Bristol fence case was obtained until October 6, 1906, as shown by the commissioner's report to the Secretary, dated October 15, 1906.

"On December 12, 1904, I filed an affidavit, signed by W. T. Webb and Charles G. Johnson, with said District Attorney Burke against the unlawful inclosure of J. B. Carl. District Attorney Burke at once wrote Carl, advising him to remove his fence, and did not commence suit.

"I filed affidavit against the unlawful inclosure of James King in March, 1906, and District Attorney Burke immediately began corresponding with King, as is evidenced by King's letters in my possession.

"In the case against Nylen and Pollock for maintaining an unlawful inclosure, three affidavits were filed, District Attorney Burke having rejected the first two filed as being insufficient. One of these affidavits Special Attorney Rush, of Nebraska, passed upon as being sufficient. No action was had, and the case was finally dismissed by District Attorney Burke. In this case affidavits of the claimants and their friends were accepted by the district attorney maintaining that the fence was down. My examination showed that only the wire was down, and I told the court I only knew by hearsay that the posts were down.

"I had affidavits and evidence to present before the grand jury, which I submitted to District Attorney Burke, showing perjury on the part of one William B. Grieve, in his desert entry on lands in township 33 north, range 86 west, Wyoming, which said District Attorney Burke refused to consider or present to the grand jury, stating that it would be useless to do so, and that he would not secure a conviction in Wyoming for perjury.

"During the two and one-half years while I acted as special agent in Oklahoma I had no trouble with the United States district attorney or in prosecutions for violation of the public-land laws. The affidavits which I filed were held by the United States district attorney there to be sufficient, and I secured numerous indictments, prosecutions, convictions, and valuable results for the Government. While in Wyoming, under District Attorney Burke and the obstacles which he and others placed in my way, as herein set forth, I was unable to secure any results of any consequence favorable to the Government.

"* * * This statement is based on the fact that when I reported the John Moran inclosure to the General Land Office, wherein it was shown that in 1902 a decree had been rendered by the United States court directing the removal of said unlawful inclosure in five days, and that through the neglect of United States District Attorney Burke said decree had never been enforced, but the fence had been allowed to remain up for nearly four years, and the question was as to whether or not Moran should be cited for contempt of court, and the district atorney had requested me to go out and see if the fence was down, and Mr. Wadsworth, the agent in charge, had given me general instructions not to go out a second time when my report and investigation had shown the fence to be still standing, the General Land Office, nevertheless, instructed me to go out again and see if the fence was down, thereby sustaining United States Attorney Burke as against the instructions of Wadsworth; and I had the belief that at all times the General Land Office was sustaining United States District Attorney Burke in his actions, which were inimical to the proper administration of my office. And, further, after I served notice on the Warren Live Stock Co. to remove its fences, the General Land Office began to call upon me in regard to matters that I had examined and reported on two or three years previously, which required letters of explanation and consumed time that should have been devoted to the investigation of matters then pending and that caused me a great deal of annoyance and interfered very much with the proper discharge of my duties, said office stating that the reports mentioned appeared not to have been filed, when, as a matter of fact, they had been, all of which matters, together with those heretofore mentioned, greatly harassed and distressed me."

(Affidavit of Special Agent Hintze:) "On August 24, 1905, I interviewed T. F. Burke, United States attorney, at his office in Cheyenne, Wyo., and there and then urged the bringing of criminal suits for perjury and civil suits to set aside patents in the cases of F. C. Haselton, H. E., No. 2233, and Eliza Fields, H. E., No. 2142, Sundance, Wyo., series.

"The said attorney refused absolutely to bring such suits, saying he believed it impossible to secure a conviction in a criminal suit for perjury in land matters, and regarding the civil suits stating that what the State needed was the land on the tax lists to reduce taxes. He further stated that he believed that the paying of taxes was enough of a punishment for the deed."

(Statement of P. R. Wadsworth, special agent in charge, in report to General Land Office, Mar. 17, 1906:) "But it is certainly strange, particularly in my case, that other district attorneys have not complained of me. I have worked with Mr. Rush, at Omaha, and have worked with Mr. Elliott and Mr. Potter, of Sioux Falls, and never at any time have I had any trouble with Mr. Burke, but he seems to want to complain of me especially in connection with the Yeast case. And, as to this, I want to say now, looking back over the Yeast case and considering my connection with it from beginning to end, that if I had it to do over I can not think of a single thing that I would do different from what I did."

Statements compared, of P. R. Wadsworth, special agent of the General Land Office, and Timothy F. Burke, United States attorney for Wyoming.

PERRY A. YEAST UNLAWFUL INCLOSURE CASE.

P. R. Wadsworth.	T. F. Burke.
The survey was made ——— and a map of the fence was furnished me. This map showed that I was approximately correct in my crude map I had made and filed with my report. In some instances I remember, to my astonishment, I was almost absolutely correct as to the way certain lines of fence ran. He (Burke) certainly knows that it is entirely too strong to say that the survey was at entire variance with my report, because this is not true. (Wadsworth's report to G. L. O., Mar. 17, 1906.)	Therefore, I asked that the fence be surveyed. Mr. Wadsworth made the affidavit necessary to institute the suit, which was at once started. Mr. Yeast, after service, called at my office and insisted that the fence was removed. In correspondence with Mr. Wadsworth he insisted that it was not removed. I later got the results of the survey, and it became apparent that Mr. Wadsworth's fence, that he rode or described in his affidavit, was miles away in places from that sought to be complained of ———. I had thus been led once into court verifying positively a bill, as the law compelled me to do in order to bring suit, the allegations of which were false in large part. (Burke's letter to Attorney General, Feb. 8, 1906.)
To say that these facts were ascertainable by mere observation and that the expense of the survey could have been saved, and all the expense incident to the trial, is a statement that is not supported by the facts and by the truth. Why, if we had not had the survey he would never have tried the case, because he positively said that all the time ———. I can not understand why Mr. Burke talks this way in this case, and I am surprised to know that he states this particular matter to which I am now referring. He certainly implies that the Government was at the entire expense of this trial. This, of course, is not true. On the other hand, the absolute truth is that we really gained a big victory in the trial in one sense, because the court held that Yeast had not taken down his fence when the bill was filed, and therefore taxed the costs to Yeast. As to this I quote from a letter to me under date of August 7, 1905, from Charles T. Clark, assistant United States attorney at Cheyenne, as follows: "The court held in the Perry A. Yeast case that the unlawful inclosure complained of had been removed prior to the time of the trial of the case and subsequent to the commencement of the same, and therefore dismissed the case, the costs to be paid by Yeast. In this connection you will note that the court held that there was no inclosure. The court probably could hardly hold otherwise, as there were some parts of the fence taken down, and the particular pastures in which no part was taken down we failed to show that Yeast owned the fence.	The result was an unqualified dismissal of the bill; that is, a finding that he was maintaining no illegal fence at the time the suit was commenced and that there was no occasion for filing the bill. A fact was thus established which was ascertainable by mere observation, and which, if done, would have saved not only the expense of the survey, but all of the expense incident to the trial, which was great, and would have saved me from twice positively verifying pleadings which alleged an untruth. No 20,000 acres of public land were opened up, or any other number of acres, by these proceedings, except by the proceedings which had taken place prior to the bringing of suit, the result of which should have been ascertained and known and correctly reported to me before the bringing of the action, and I should not have been led into twice appearing in a court of equity positively verifying pleadings which were untrue. (Burke's letter to Attorney General, Feb. 8, 1906.)

(D. W. Clawson swore on witness stand that he was owner of the north pasture.) The fact that Yeast had to pay these costs was, of course, some punishment to him, and the further fact that he was made to know, and know for sure, that we would continue to pursue him, has no doubt made him desist in rebuilding his fence, as is the common practice in cases of this kind. (Wadsworth report above mentioned.)

D. W. CLAWSON INCLOSURE CASE.

P. R. Wadsworth. W. C. Hintze.	W. E. Burke.
I directed Mr. Hintze to go to the office of Mr. Burke, United States attorney, and there recommend that suit be brought to remove the fence and that criminal prosecution be commenced against Clawson. Mr. Hintze followed my directions with the result set forth in his said report. (See below.) So, so far as I know, no suits whatever have been brought and nothing has been done. (Wadsworth's report to G. L. O., Sept. 11, 1905.)	
August 24, 1905, Hintze appeared before United States Attorney Burke, at Cheyenne, Wyo., in person, and requested that both civil and criminal actions be brought at once against Clawson. Affidavit upon which to bring civil suit was prepared and Burke promised to bring civil suit without delay. The said attorney at that time absolutely refused to have Clawson arrested on information or in any way to prosecute him criminally. (Affidavit W. C. Hintze, Oct. 1, 1906.)	In the Clawson matter it is true that a sufficient affidavit was filed by Special Agent Hintze in my office on August 25, 1905, and before the bills was completed ———. Mr. Clawson called, requesting that I should not bring suit ———. I, as stated, consented to defer filing the petition for a short time ———, and that he should notify Mr. Hintze at Buffalo when the fence was removed, and that upon Mr. Hintze assuring me that the fence was removed I would not file the suit.
As I stated to you at Cheyenne, I believe a few determined moves on the part of the Government officials would put an end to the fence nuisance. Even if it is impossible to secure a conviction, we can put these violators to so much inconvenience and expense that they will be glad to quit. (Hintze's letter to Burke, Sept. 1, 1905.)	In this connection I would state that I have no remembrance of being asked by Mr. Hintze to institute criminal proceedings against Mr. Clawson, nor do I remember the advisability of it being suggested. Had it been, opportunity to present the case to the coming grand jury would have been given, before which body Mr. Hintze was a witness in another case. No suggestion of it was made to my knowledge. (Burke's report to Attorney General, Feb. 6, 1906.)
In addition to the written notice, I warned him (Clawson) in conversation that we could not be trifled with and that if he did not remove that fencing according to that notice that criminal prosecution would be commenced against him. Now, we know that, in the face of this notice and in the face of my talk to him, that he wholly disregarded us. I feel that Clawson should be prosecuted. He deserves no leniency whatever. I therefore recommend that the Attorney General of the United States be asked to direct Mr. Burke, United	——— I do not know that he at any time has expressed to me a desire for anything else or otherwise to be done in connection with his cases than that which was done, except it be the first time he appeared in my office he desired to have an arrest made in a fence case (Clawson case), and the party brought before a commissioner ———. (Burke's report to Attorney General, June 19, 1906.)

States attorney for Wyoming, to begin criminal proceedings against him. (Agent Wadsworth's report to G. L. O., Sept. 11, 1905.)

I have no knowledge of anything being done by the General Land Office to help the situation, and the case hung fire until February 13, 1906, when Mr. Burke wrote me that he had that day filed suit against Clawson. (Hintze's affidavit, Oct. 1, 1906.)

(It will be noted that the filing of suit by Burke was five and a half months subsequent to the filing with him of a sufficient affidavit by Agent Hintze.)

(See also Special Agent Hintze's letter of Aug. 18, 1906, to the Secretary of the Interior in regard to the Henry G. Weare unlawful inclosure case.)

The report of Special Land Inspector Linnen dated September 7, 1906, and the evidence in support thereof, relative to conditions in Wyoming, reduced to their last analysis, present the following principal propositions:

I.

That the Warren Live Stock Co. is now maintaining, and for several years last past has maintained, unlawful inclosures of public land in the States of Colorado and Wyoming, approximating 50,000 acres; and that said company has been notified by a special agent of the General Land Office, in both Colorado and Wyoming, to remove its unlawful inclosures in said States, and has failed to do so.

In support of this proposition there is offered the statement of Inspector Linnen as contained in his report; three maps or plats, marked Exhibits "A," "B," and "C," showing respectively the inclosure of said company north of Cheyenne, the inclosure of said company south of Cheyenne in southern Wyoming and northern Colorado, and the extreme northern pasture of said company north of Cheyenne; the affidavits of Elmer E. Harriman, D. Mantey, Francis J. Mantey, Van L. Gilford, Horace E. Adams (corroborated by the statement of three other persons), and the affidavit of former Special Agent W. E. Jenison and of Alexander Kirkbride.

REMARKS.

The extent of the exterior fence, shown on Exhibit A is 89 miles, and the acreage of public lands within said exterior fence is shown to be 33,920 acres. Inspector Linnen in his report explains in detail the means he employed to ascertain the exact location of the fences of the Warren Live Stock Co. shown on this map. He has further stated since filing said report that the location of said fences was further pointed out to him by two ranchmen, who live in the vicinity of said inclosures and whose affidavits on the general subject of said inclosures are with his report; that the location of said fences was also pointed out to him by the manager of one of said unlawful inclosures and a ranchman living in one of the Warren ranch houses within the Warren inclosure. He states that the affidavits of these men were not obtained as to the identity of the fences indicated on Exhibit A, for the reason that at that time he did not have said plat constructed from said survey, and for the further reason that he was not seeking to give publicity to the business upon which he was engaged; that the information was obtained in such a way that he is absolutely sure of its accuracy, in that not knowing who he was there could have been no inducement for them to give him false information; that the evidence of these men can be obtained, with possibly one exception, and of many others as to the accuracy and identity of the fences indicated on Exhibit A. This, therefore, explains why there is no direct evidence with the record as to the identity of the fences indicated on Exhibit A. There is, however, corroborative testimony which tends to show its accuracy. The act of February 25, 1885, in paragraph 2 thereof, in outlining the information necessary to be placed before the district attorney, upon which to base action in such cases, provides that the information given shall show "a description of the land inclosed with reasonable certainty, not necessarily by metes and bounds nor by governmental subdivisions of surveyed lands, but only so that the inclosure may be identified and the persons guilty of the violation, as nearly as may be," etc. A. Kirkbride, who lives immediately north of the inclosure indicated on Exhibit A, has an affidavit with the record, in which he states that he has lived in that locality for 18 years; that when he first settled there, all of the country between his place and Cheyenne, except the Warren Pole Creek pasture (which is indicated on Exhibit A) and the Arbuckle pasture (which is indicated on Exhibit D), was vacant and not fenced and was public range; that about 15 or 16 years ago the Warren Live Stock Co. fenced the country from his place to Pole Creek, lying to the south. The location of this man's ranch and that of the inclosure indicated on Exhibit A are both indicated on Exhibit D, and his statement would seem to be such a general description or identification of the inclosure indicated on Exhibit A as is contemplated by the act of February 25, 1885, above quoted.

The boundaries of the unlawful inclosures indicated on Exhibit D were placed there as the result of information obtained from those persons whose affidavits are not in the record, as above stated. The blue print of the survey of the Arbuckle inclosure, made by a competent surveyor under the direction of the the manager of said company, which Inspector Linnen obtained, corresponded exactly with the boundaries of said inclosure as outlined on Exhibit D, which, as stated, were placed there by information obtained from those persons whose affidavits are not in the record, which tends strongly to prove that all of the inclosures indicated on said Exhibit D were correctly indicated, among which was that of the Warren Live Stock Co., as indicated on Exhibits A and B.

It may be further stated that another strong corroborative item given by Inspector Linnen is that the boundaries of the unlawful inclosures indicated on Exhibit D were placed there from information obtained, as above stated, prior to making the survey in the field of the Warren Live Stock Co.'s inclosure; and that when said survey was made and Exhibit A drafted therefrom it was found that the inclosure shown on Exhibit A checked up practically identical with the same inclosure indicated on Exhibit D, and with the boundaries of the other inclosures with which it came in contact, as indicated on Exhibit D; and the same is true of Exhibit B, which tends to show the correctness of said survey.

Within the exterior fence indicated on Exhibit A four gaps are shown: Two on the south line of 500 and 800 feet in length, respectively, where the wire is down and the posts standing; one on the west line near the southwest corner of said inclosure of 520 feet in length, where the wire is down and the posts standing; and one on the east line of said fence of about 2 miles in extent, where the fence is entirely down. The division fence between the two pastures indicated on said map has the wire down for probably 6 miles, but the posts are standing. The report shows, however, that these gaps do not affect the continuity of the inclosure, for the reason that the pastures adjoining are all inclosed. So that it could hardly be claimed with any degree of assurance that said fence did not in fact constitute an inclosure, or did not enable said company to control the public lands within the exterior limits of said fence, or that said fence did not obstruct free passage to said public lands, as prohibited by the fencing act of February 25, 1885.

In the case of Camfield *v.* United States (167 U. S., 518-527), the fence there involved was built wholly upon odd-numbered sections, but was so constructed as to inclose the even-numbered sections, with a swinging gate on each section line for egress and ingress, as the defendants maintained, to public lands within said inclosure. The court held that notwithstanding said swinging gates, the inclosure was within the law and, therefore, illegal.

Exhibit B shows an exterior fence of 104½ miles in extent, and the public lands within said fence are shown to aggregate 1,880 acres. The correctness and identity of this inclosure is established by the statement of Inspector Linnen and the separate affidavits of those men who assisted in making the survey, and whose knowledge of the fences of said inclosure is amply shown by their affidavits, together with the corroborating evidence above mentioned with regard to Exhibit A. A portion of the southern line of said fence, in the southwest part of said inclosure, has the wire down for a thousand feet with the posts standing. There is a small gap in said fence on the southern line thereof, in the southeast portion of said inclosure, where the wire is down and the posts standing. And there is a small gap in the fence of said inclosure near the Colorado line, on the road leading to Cheyenne, where the wire is down and the posts standing. These gaps, however, can not be considered as a removal of the fence, so long as the posts are standing, and even if the posts were removed, they would not affect the continuity of the inclosure, for the reason stated in relation to Exhibit A, nor prevent said company from controlling the public lands within the exterior lines of said fence, nor prevent said fence from interfering and obstructing free access and passage to said public lands.

Exhibit C shows the exterior fence to be 26¼ miles in length, and that the public lands within said exterior fence aggregate 13,830 acres. This inclosure is maintained, it is alleged, by the Warren Live Stock Co. and others; in other words, is not maintained solely by said company.

Portions of the exterior fence shown in Exhibit A are built on the odd-numbered sections, but this does not relieve them of being unlawful in character where they operate to inclose public lands, as in this case, as held by the Supreme Court in 167 U. S., 518.

The correspondence in the files of the department shows that a special agent of the General Land Office served notice on the Warren Live Stock Co. in October, 1905, to remove its unlawful fences from the public domain in Wyoming, and the return registry receipt, signed by a representative of said company, is in the possession of the department, which shows that said notice was received. Said correspondence also shows that said company was notified by a special agent of the General Land Office in November, 1905, to remove its unlawful inclosures in Colorado. It has been contended by said company, as the department is advised, that said notice, as to Wyoming, was insufficient, in that it did not specifically describe the lands inclosed by section, township, and range, and that therefore said notice was not a legal notice. In this connection, attention is called to the fact that the fencing act itself does not provide for any preliminary notice. The practice of giving notice is the result of instructions prepared by the Commissioner of the General Land Office to his special agents in the field, which were approved by the Secretary of the Interior January 29, 1904. Paragraph 5 of those instructions directs the special agent as follows:

"Upon receipt of any charge or complaint the special agent will send, by mail or other proper means, a written notice to the proper address of the party or parties making or maintaining such unlawful inclosure advising them that it is charged that they are violating the law relating thereto, and that they will be allowed sixty days from notice within which to remove such inclosure or obstruction, and that in default thereof the matter will be submitted to the United States attorney for prosecution under the law."

It will be observed that the notice which is therein directed to be given does not require that a definite or specific description of the lands shall be embodied in said notice. The evident purpose of said notice is to call the attention of persons maintaining unlawful inclosures of the public lands that the department is advised of the fact and will allow them 60 days of grace before proceeding against them. Every man who is maintaining an unlawful inclosure is aware of it, and after his attention is called to the fact that the Government also is aware of it, it is his business to cease being a lawbreaker. It is not believed, therefore, that the contention made as to the insufficiency of the notice served on this company as to Wyoming is sound, and as the fences of this company unlawfully inclosing public lands have not been removed at the date of Inspector Linnen's report, it is believed that the case is in proper shape to submit to the United States attorney, as provided by the fencing act of 1885, for the institution of proceedings to secure the removal of said fences in both Colorado and Wyoming.

II.

That the Warren Live Stock Co. and some 35 or 36 other individuals and corporations are now maintaining, and for several years have maintained, unlawful inclosures of public land in the State of Wyoming, aggregating approximately half a million acres; and that a number of those maintaining such unlawful inclosures have been notified by a special agent of the General Land Office to remove the same, and have failed to do so:

In support of this proposition there is offered the statement of Inspector Linnen, in his report; a map or plat, marked "Exhibit D," showing the extent of each separate inclosure and the nature of the lands inclosed therein—

whether public lands, State selections, private holdings, etc.—the evidence that can be obtained from Charles Thomas, George B. Allen, and Mr. Boice, as stated in Inspector Linnen's report, and the affidavits of Horace E. Adams, Mrs. D. Mantey, Van L. Gilford, Special Agent Pugh, D. W. Elliott, Alexander Kirkbride, and former Special Agent W. E. Jenison.

Remarks.—In this connection attention is called to the fact that the following-named company and individuals, who are shown on Exhibit D as maintaining unlawful inclosures, have been served with notice by a special agent of the General Land Office to remove the same:

The Warren Live Stock Co., Cheyenne, Wyo., notified by registered mail October 9, 1905; also November 28, 1905, as to Colorado.

John Wilkinson, Pine Bluff, Wyo., notified by registered mail April 7, 1904.

Mrs. Clara Fullerton, Cheyenne, Wyo., notified by registered mail March 25, 1905.

Charles Farthing, Cheyenne, Wyo., notified by registered mail January 23, 1905.

William Williams, Tie Siding, Wyo., notified by registered mail July 31, 1904.

Charles Thomas, Cheyenne, Wyo., notified by registered mail October 4, 1904.

H. P. Allen, Iron Mountain, Wyo., notified by registered mail August 15, 1905.

A. W. Bristol, Little Bear, Wyo., notified by registered mail March 24, 1904. The notice in this case was not obeyed, suit was brought upon the special agent's report, and finally decree rendered October 6, 1906, by the United States district court to abate within five days.

With the exception of posibly the last named, the persons and company above mentioned have not removed their fences, so far as the department is advised, in response to said notice. As to them, except the Warren Live Stock Co., as to which suggestions are made on page 6 hereof, the cases are now ready for personal investigation to be made of the lands alleged to be unlawfully inclosed, with a view to determining whether such an inclosure exists or has been removed and for the purpose of securing sufficient data, including a description of the land, as will enable the special agent, or whoever examines the said lands or inclosure, to properly present the case to the United States attorney for the institution of proceedings to secure the removal of said fences, as provided by paragraph 6 of the regulations of January 29, 1904.

As to the other parties shown on Exhibit D to be maintaining unlawful inclosures, they should at once be notified, as provided in the instructions of January 29, 1904, to remove their said fences, and such subsequent proceedings had as later developments may determine.

III.

That the indifferent or antagonistic attitude of Timothy F. Burke, United States district attorney for Wyoming, and his indisposition to vigorously prosecute those maintaining unlawful inclosures of the public lands in Wyoming, make it practically impossible to effectually enforce the law prohibiting such unlawful inclosures.

In support of this proposition, there is offered Inspector Linnen's statement, as contained in his report; affidavits of Special Agent W. B. Pugh. Forest Supervisor W. E. Jackson, former Special Agent W. E. Jenison, Special Agent Hintze, and certain correspondence in the possession of the Interior Department.

Remarks.—In this connection attention is called to the fact that the manner of Mr. Burke's procedure in such cases was the subject of considerable correspondence in the early part of this year between this department, the Department of Justice, and the General Land Office, and, as the result of certain statements and explanations made by Mr. Burke, the matter was allowed to rest in abeyance pending the receipt of further information. Since that time, however, the special agents of the General Land Office, to whom Mr. Burke largely attributed the cause of the result in some of the unlawful inclosure cases in Wyoming which he had prosecuted. have replied with explanations, denials, and counter charges. In addition, the special agent now stationed at Cheyenne has expressed a lack of confidence in Mr. Burke's disposition to vigorously prosecute such cases, as has also a forest supervisor in the employ of the Forest Service, Agricultural Department.

In view of the above, it is respectfully submitted that the suggestion of Special Inspector Linnen that a special assistant United States attorney be located at Cheyenne to take charge of this class of cases may be worthy of serious consideration.

CONCLUSION.

It is proper here to suggest that these matters were submitted by the special land inspector for the information of the department. The character and extent of the evidence accompanying the report is only intended as a sample of what could be and should be amplified and extended if the matter reaches the court. In other words, the limited time of the inspector prevented the collection of more evidence than was necessary to corroborate the showing made in his report.

It is believed, however, that the evidence submitted with the special land inspector's report fairly establishes the proposition stated, or where the same is lacking that clear indications are given of the source from which it may be strengthened.

We submit herewith maps marked Exhibit "A," "B," "C," and "D."

After a careful consideration of all the above reports and documents submitted us by the Department of the Interior we find that at the time of the Linnen report, September 7, 1906, the Warren Live Stock Co. was maintaining unlawful inclosures, as stated in the charges filed with the committee.

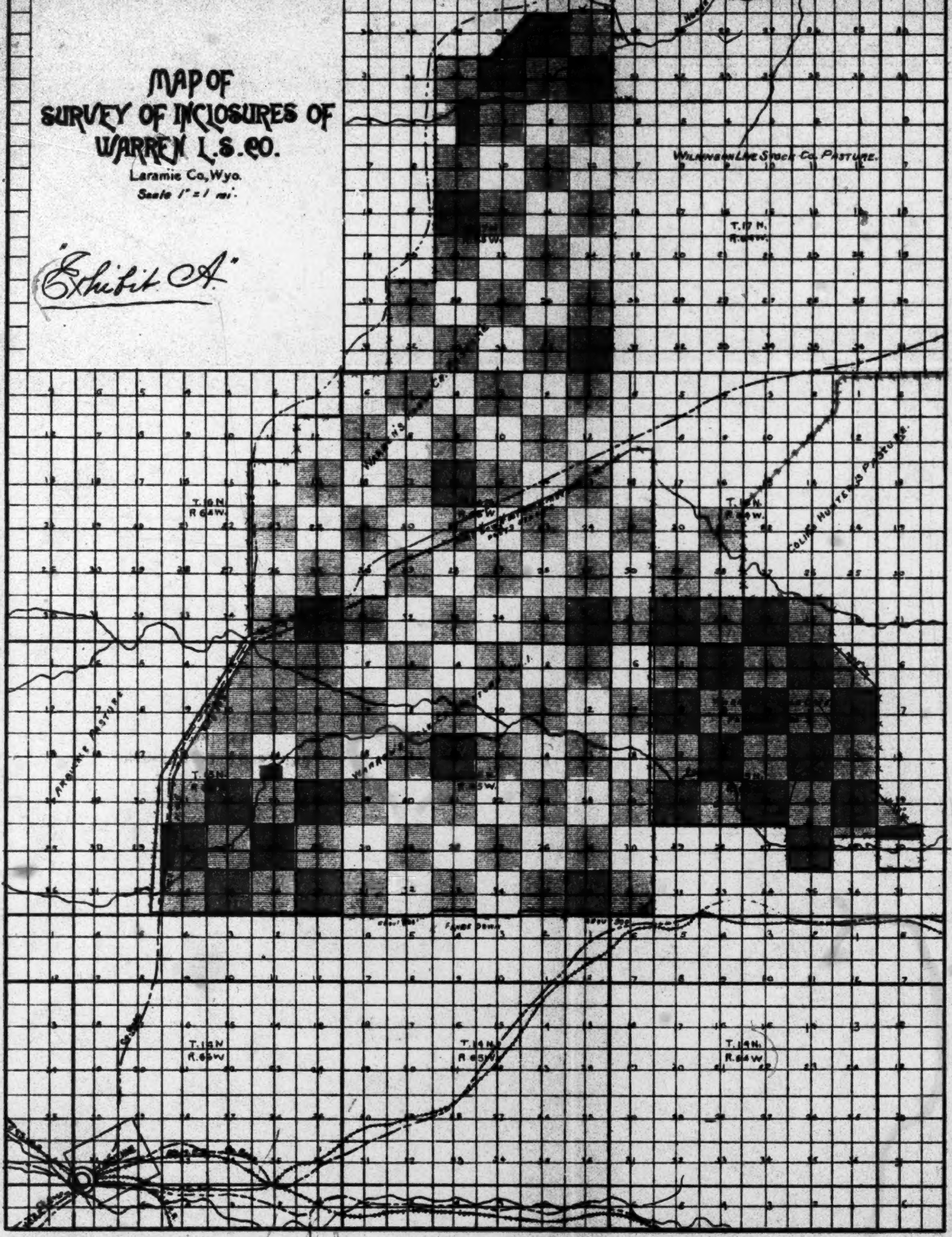
JAMES M. GRAHAM.
HENRY GEORGE, Jr.
W. L. HENSLEY.
OSCAR CALLAWAY.

MAP OF SURVEY OF INCLOSURES OF WARREN L.S. CO.

Laramie Co, Wyo.

Scale 1" = 1 mi.

"Exhibit A."


Wilkinson Live Stock Co. Pasture
T. 17 N. R. 64 W.
T. 16 N. R. 64 W.
T. 16 N. R. 63 W.
Warren's L.S. Co. Pasture
Collins Hunter's Pasture
Arbuckle Pasture
T. 15 N. R. 65 W.
T. 14 N. R. 65 W.
T. 14 N. R. 64 W.
Legend
County Roads.
Railroads.
Warren's Fences
Arbuckle
Wilkinson's
U.P. Grant.
State Land.
Filings.

THE NORRIS PETERS CO., WASH. D.C.

CERTIFICATE OF SURVEYOR

State of Wyoming } ss
County of Laramie

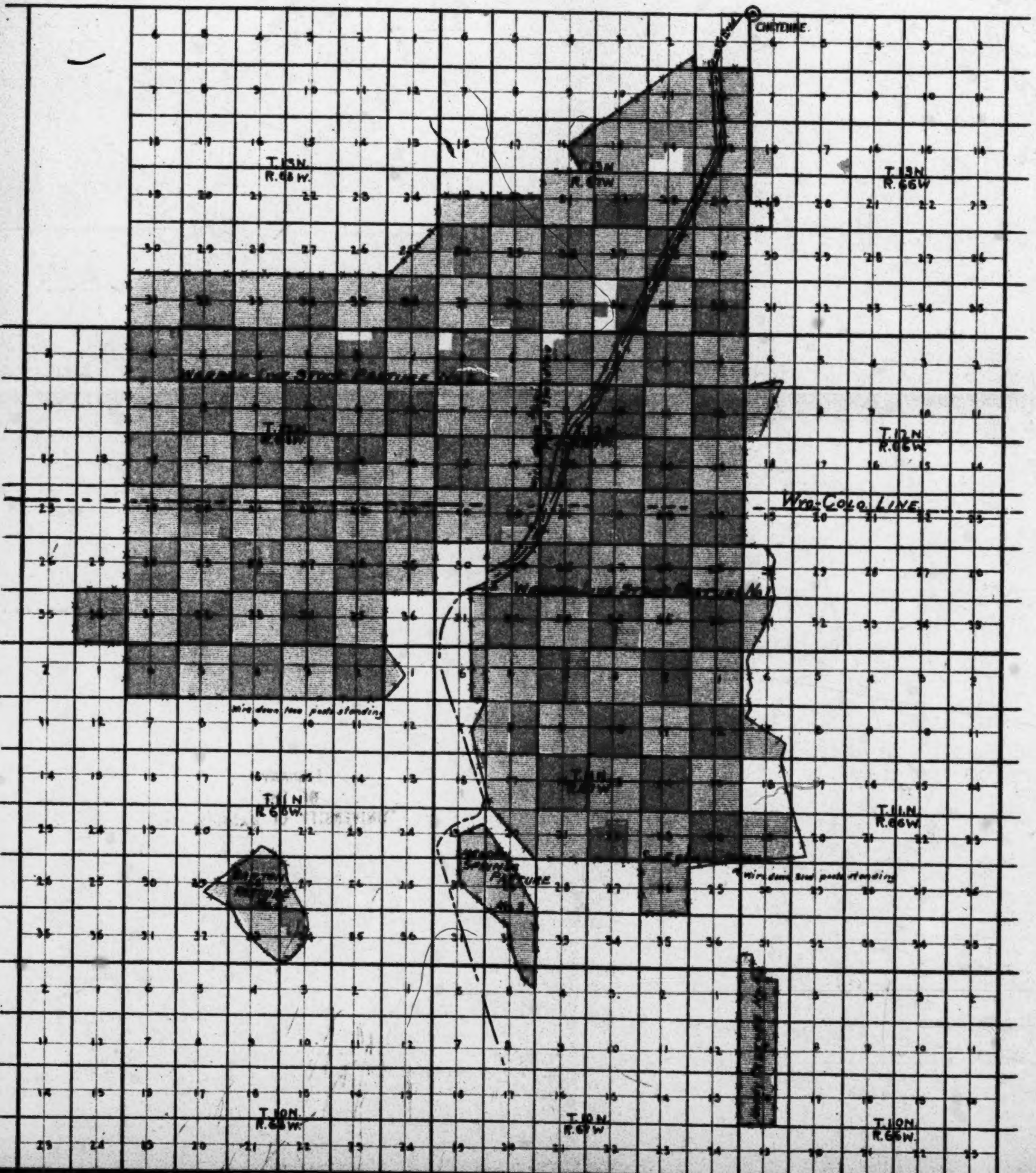
I, Sidney E. Bartlett of Cheyenne hereby certify that this map was made from notes taken during an actual survey made by me August 28 [illegible] and is a correct [illegible] the fences [illegible] the location and area of the land inclosed

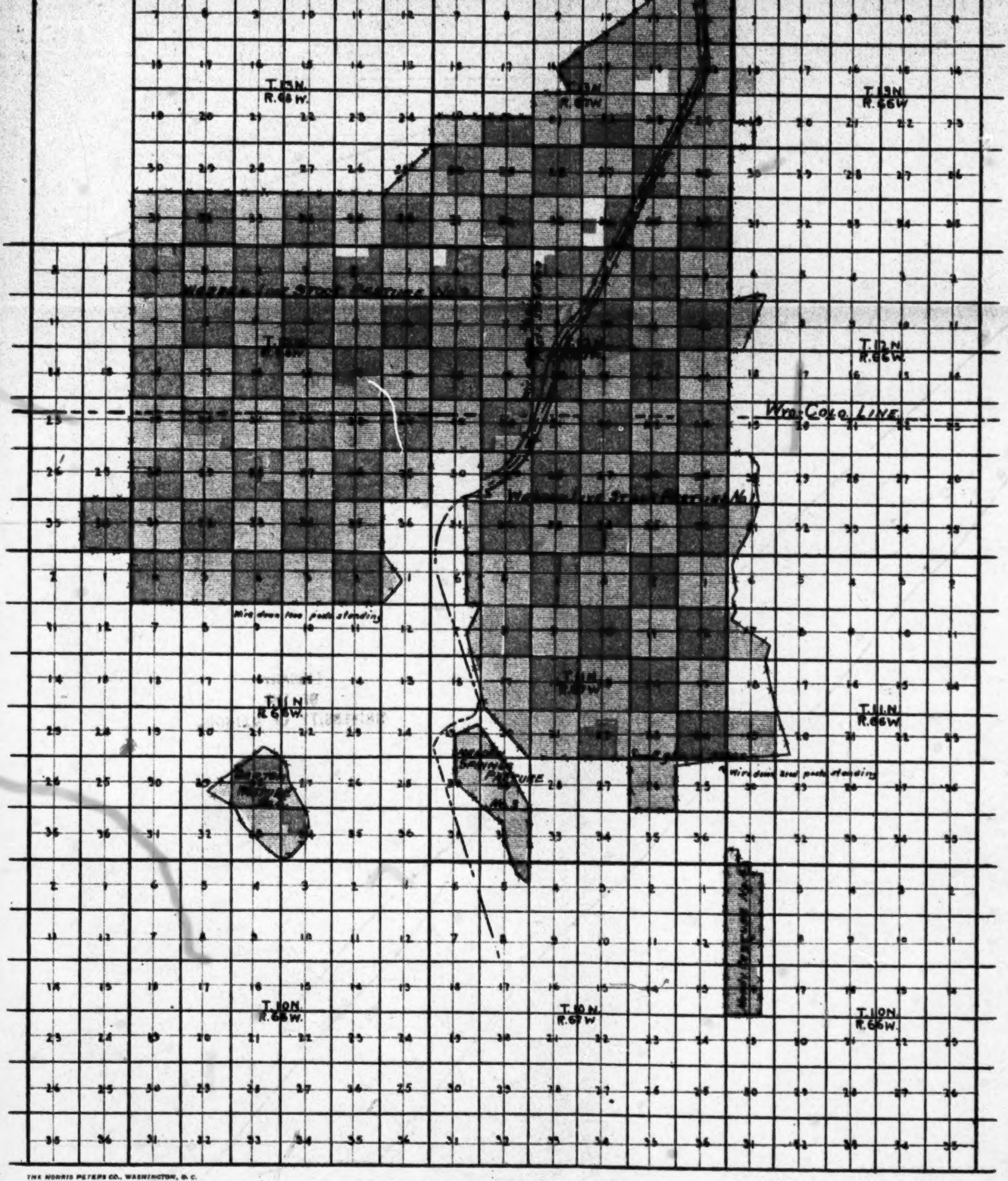
Sidney E. Bartlett
Surveyor

"Exhibit B."

MAP OF SURVEY OF INCLOSURES OF WARREN L.S. CO.

in Laramie Co, Wyo.
and
Weld Co Colo.


CHEYENNE.
T.13N. R.68W.
T.13N. R.67W.
T.13N. R.66W.
Warren Live Stock Pasture No.
T.12N. R.67W.
T.12N. R.66W.
Wyo.-Colo. Line.
Warren Live Stock Pasture No.
Wire down two posts standing
T.11N. R.68W.
T.11N. R.67W.
T.11N. R.66W.
Pasture
Pasture No. 3
Wire down two posts standing
T.10N. R.68W.
T.10N. R.67W.
T.10N. R.66W.


T.13N.
R.68W.
T.13N.
R.67W.
T.13N.
R.66W.
T.12N.
R.68W.
T.12N.
R.67W.
T.12N.
R.66W.
Wyo.-Colo. Line.
Warren Live Stock Pasture No. 1
Wire down two posts standing
T.11N.
R.68W.
T.11N.
R.67W.
T.11N.
R.66W.
Spring Pasture No. 2
Wire down and posts standing
T.10N.
R.68W.
T.10N.
R.67W.
T.10N.
R.66W.

THE NORRIS PETERS CO., WASHINGTON, D. C.

LEGEND.

County Road.
Warren Fences.
State Land.
Railroad Grant.
Entries.

CERTIFICATE OF SURVEYOR

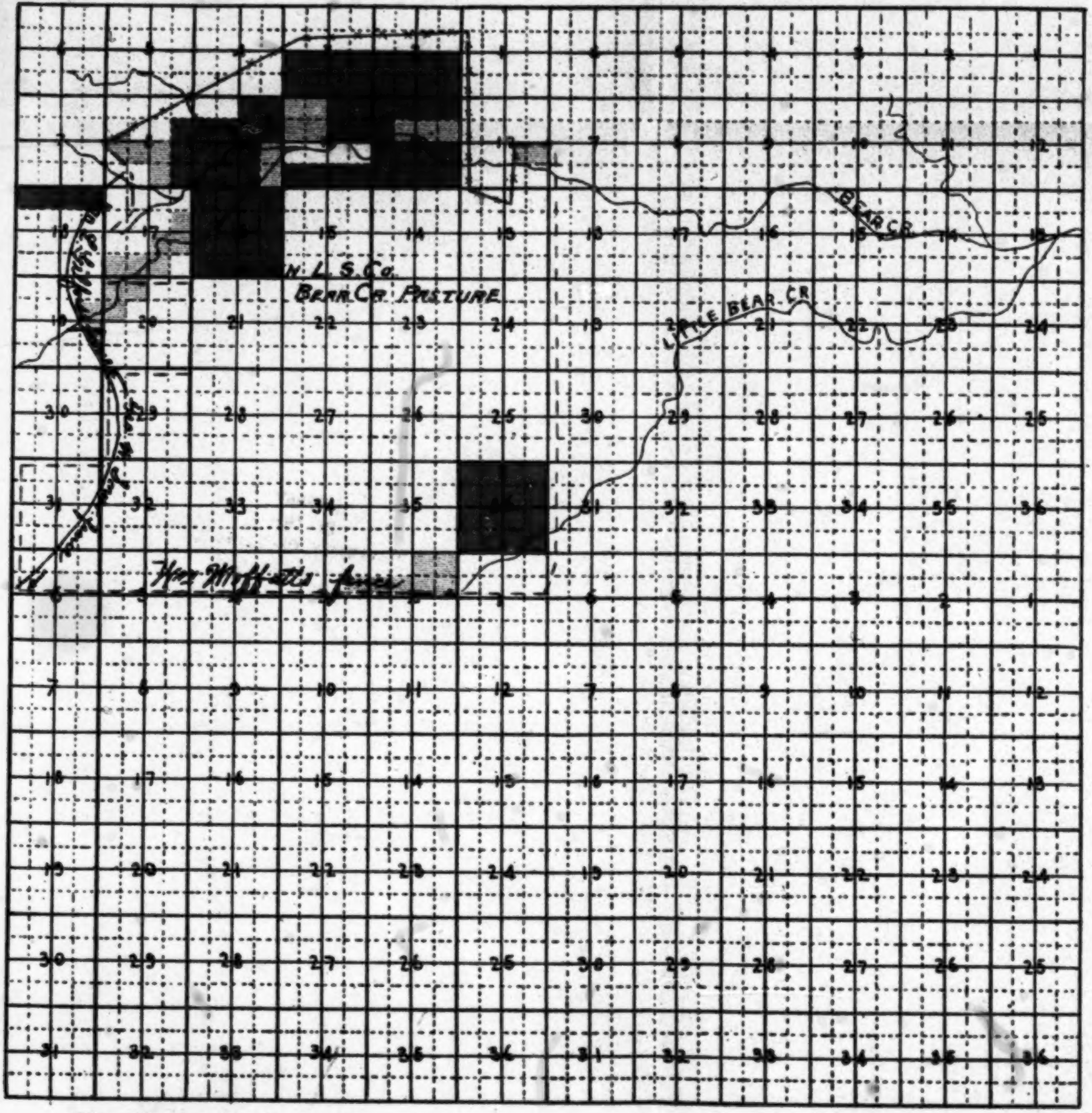
STATE of Wyoming } SS
County of Laramie

I, Charles P. Berry of Moorcroft, Wyo. hereby certify that this map was made from notes taken during an actual Survey made by me in August 28 - Sept. 3 1906, and that it correctly represents the fences described in the accompanying affidavit together with the meanders of lines and shows accurately the location and area of the lands

Charles P. Berry,
Surveyor

JAT
I.V.S.

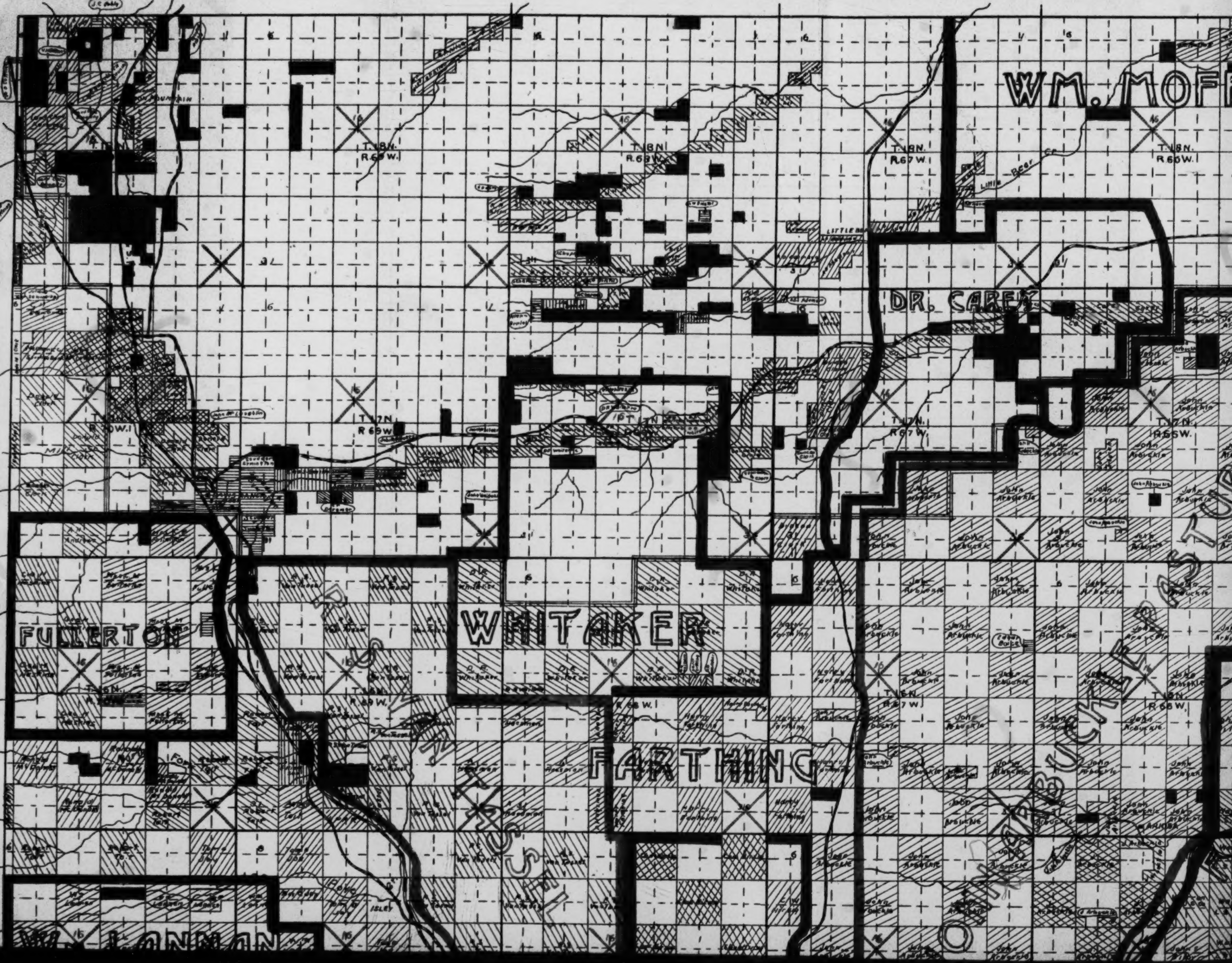
Township 19 North Range 66 West. Township ____ North. Range ____ West.


N. L. S. Co.
Bear Cr. Pasture
Bear Cr.
Little Bear Cr.
Wm. Moffett's fence

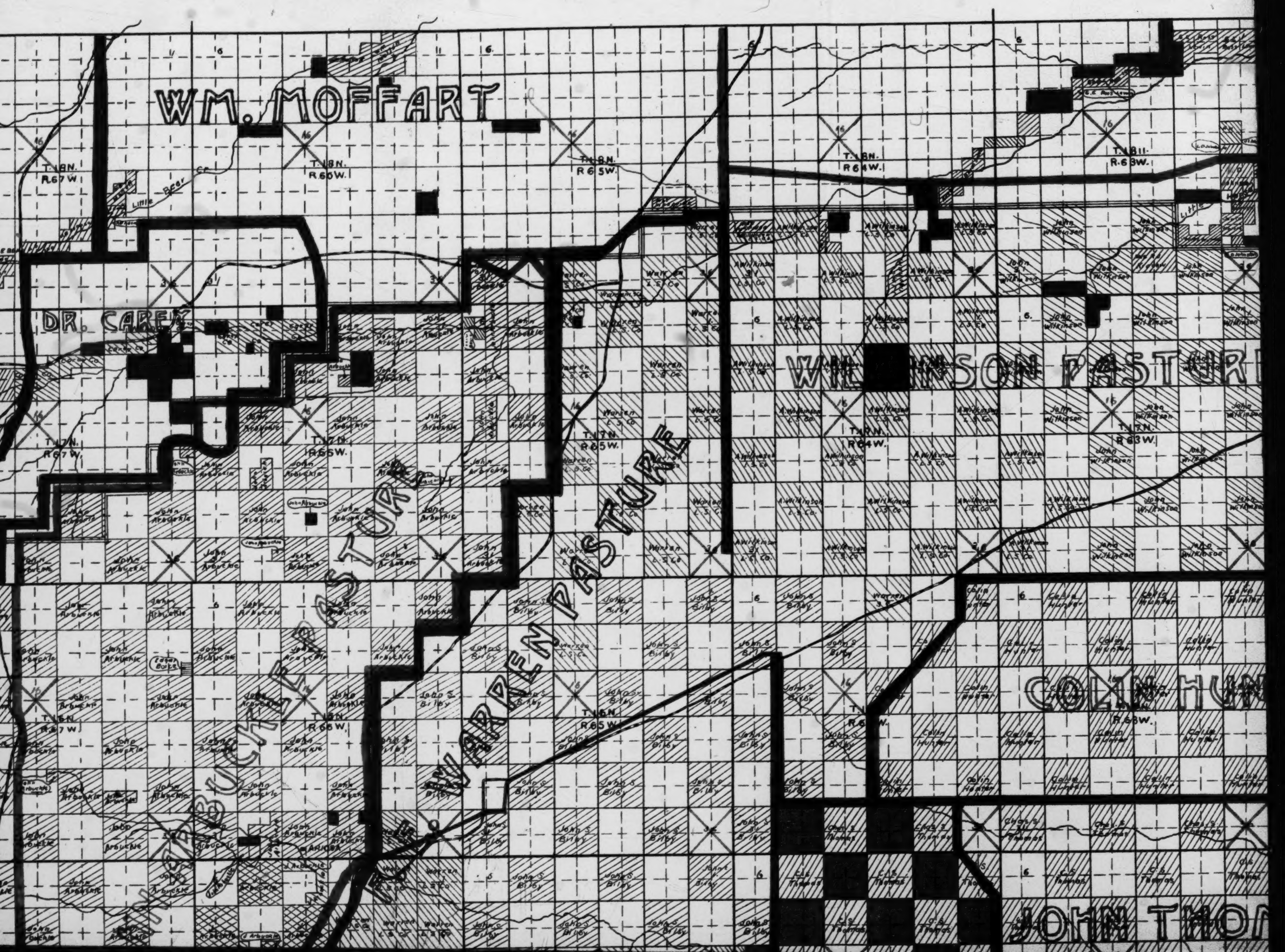
Township ____ North. Range ____ West. Township ____ North. Range ____ West.

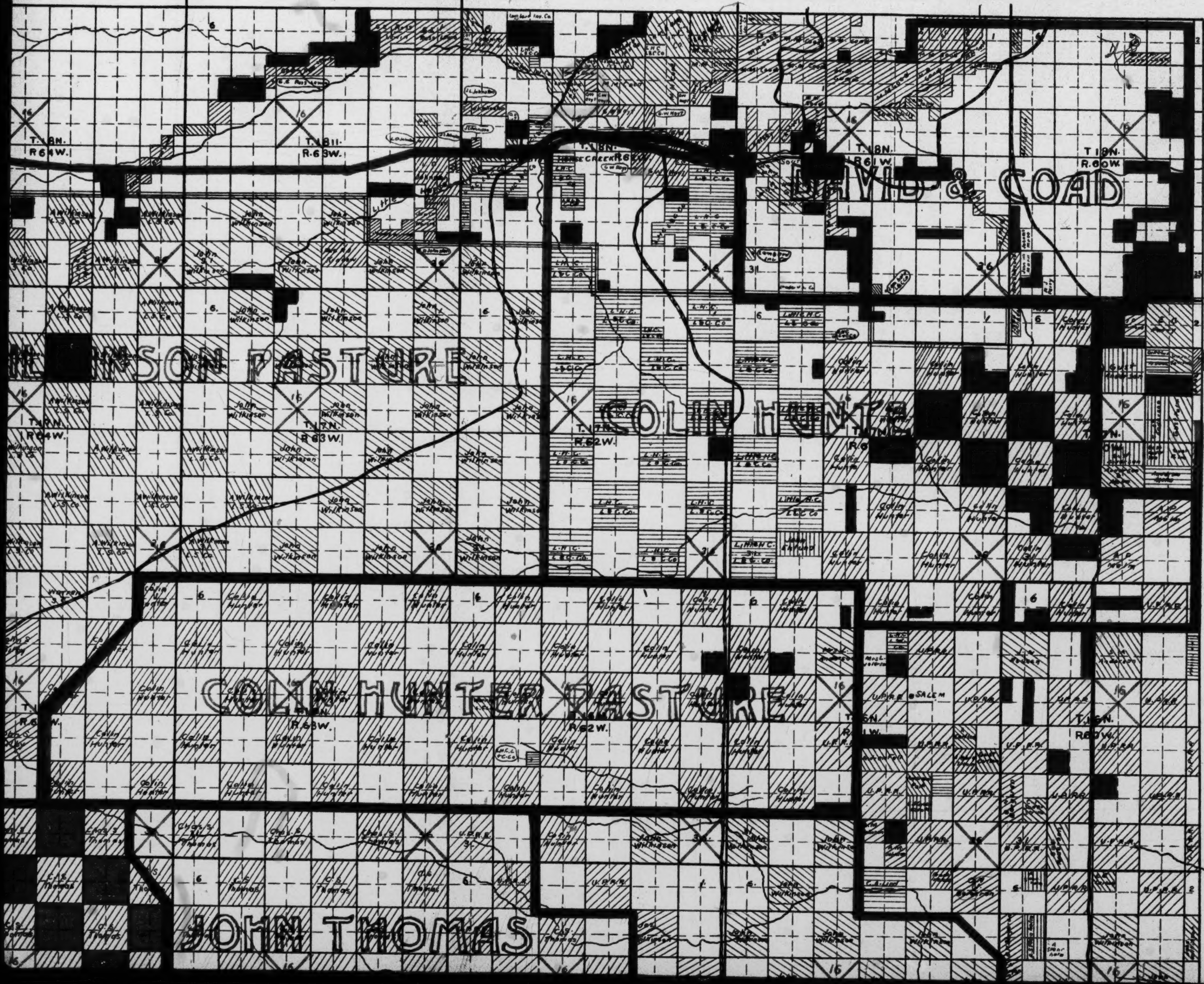
THE NORRIS PETERS CO., WASHINGTON, D.C.

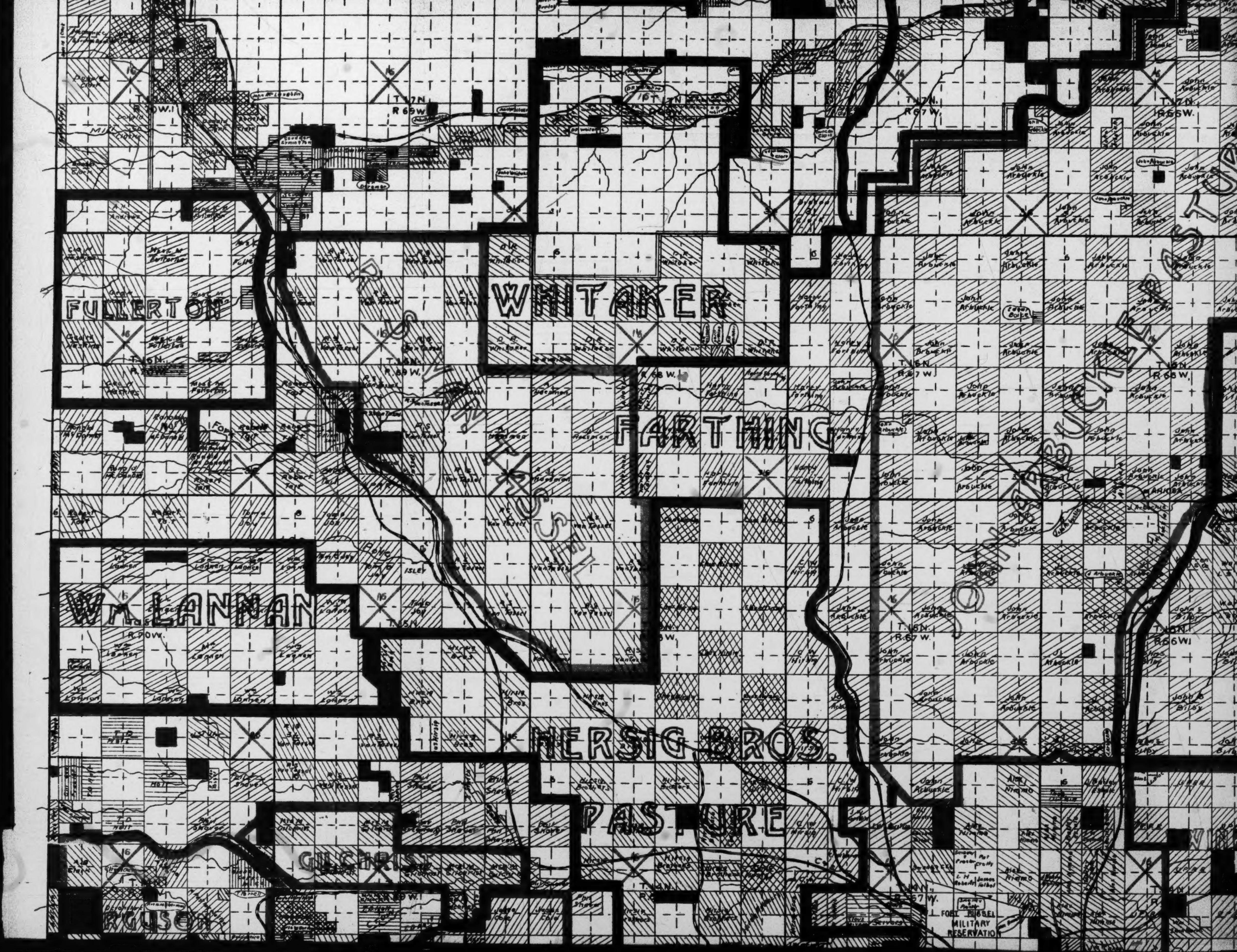
"Exhibit "C"

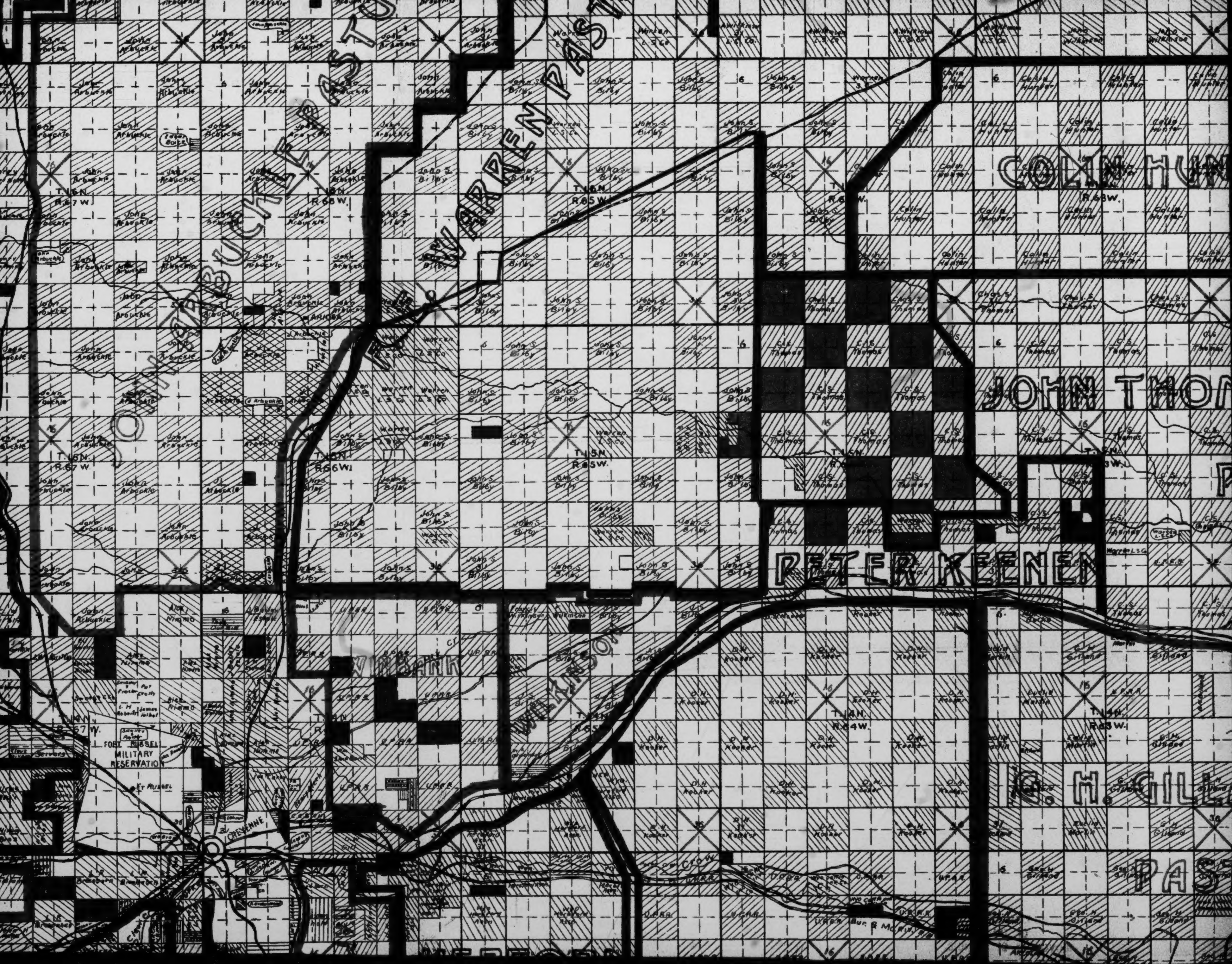


WM. MOFF
DR. CAREY
WHITAKER
FULLERTON
FARTHING
T.18N. R.69W.
T.18N. R.68W.
T.18N. R.67W.
T.18N. R.66W.
T.17N. R.69W.
T.17N. R.68W.
T.17N. R.67W.
T.17N. R.66W.
T.16N. R.69W.
R.68W.
T.16N. R.67W.
T.16N. R.66W.
Little Bear Cr.
Mill Cr.
John Arbuckle
D.R. Whitaker
Harry Farthing
Robert Tait
ISLEY

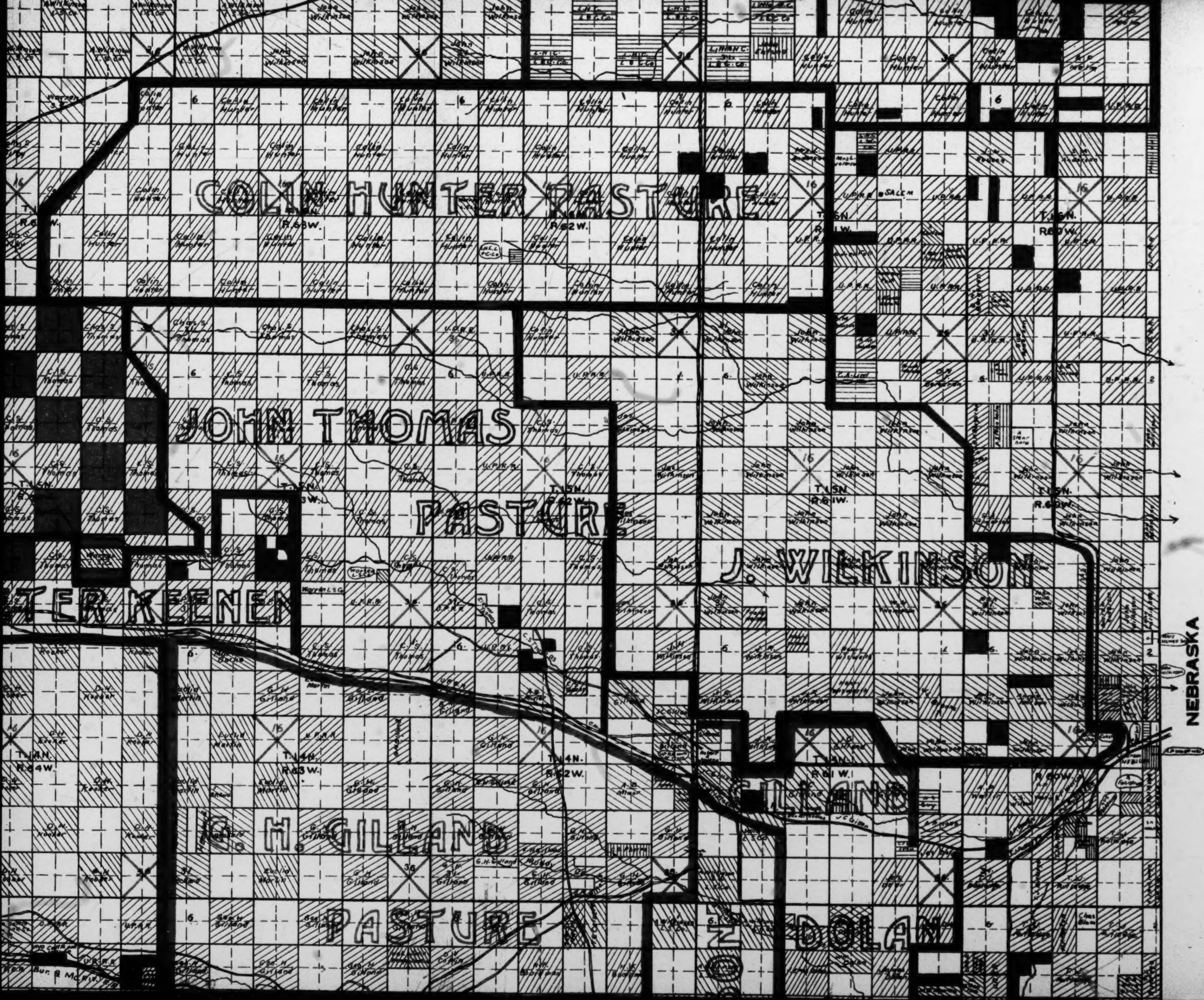

WM. MOFFART
DR. CAREY
WILKINSON PASTURE
ARBUCKLE PASTURE
WARREN PASTURE
COLIN HUN
JOHN THOM
T.18N. R.67W.
T.18N. R.66W.
T.18N. R.65W.
T.18N. R.64W.
T.18N. R.63W.
T.17N. R.67W.
T.17N. R.66W.
T.17N. R.65W.
T.17N. R.64W.
T.17N. R.63W.
T.16N. R.67W.
T.16N. R.66W.
T.16N. R.65W.
R.64W.
R.63W.
Little Bear Cr.
Little
Carey Co.
John Arbuckle
Warren L.S. Co.
A. Wilkinson L.S. Co.
John Wilkinson
John S. Bilby
Colin Hunter
Chas. S. Thomas
C.S. Thomas
Jesse Bilke
Warren L.S. Co.
Arnold
6
16
36

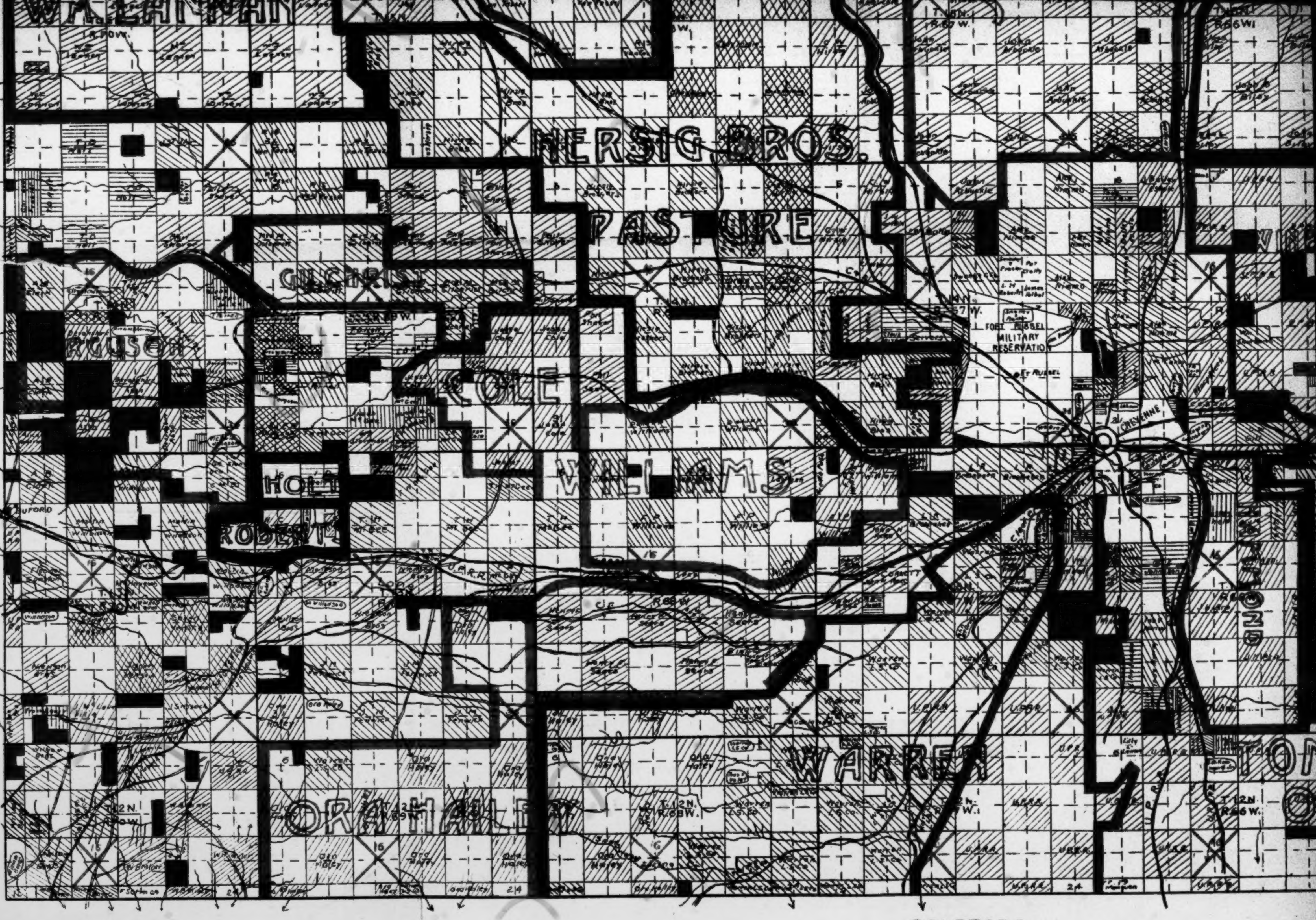

DAVID & COAD
INSON PASTURE
COLIN HUNTER
COLIN HUNTER PASTURE
JOHN THOMAS
T.18N. R.64W.
T.18N. R.63W.
T.18N. R.62W.
T.18N. R.61W.
T.18N. R.60W.
T.17N. R.64W.
T.17N. R.63W.
T.17N. R.62W.
T.16N. R.61W.
T.16N. R.60W.
R.63W.
R.62W.
John Wilkinson
A. Wilkinson L.S. Co.
Colin Hunter
L.H.C. L.&C. Co.
U.P.R.R.
Chas. S. Thomas
C.S. Thomas
SALEM
Horse Creek


FULLERTON
WHITAKER
FARTHING
WM. LANNAN
HERSIG BROS.
PASTURE
GILCHRIST
RGUSON
JOHN ARBUCKLE PASTURE
R.S. VAN TASSEL
ISLEY
FORT RUSSELL MILITARY RESERVATION
T.17N. R.70W.
T.17N. R.69W.
T.17N. R.67W.
T.17N. R.66W.
T.16N. R.70W.
T.16N. R.69W.
R.68W.
T.16N. R.67W.
T.16N. R.66W.
T.15N. R.70W.
T.15N. R.67W.
T.15N. R.66W.
T.14N. R.69W.
T.14N. R.67W.
John Arbuckle
D.R. Whitaker
Harry Farthing
R.S. Van Tassel
Robert Tait
Mack M. Fullerton
Geo. H. Hoskins
Wm. Lannan
Hirsig Bros.
C.W. Hirsig
Paul Shaver
T.D. Holt
Alex Nimmo
John B. Bilby
16

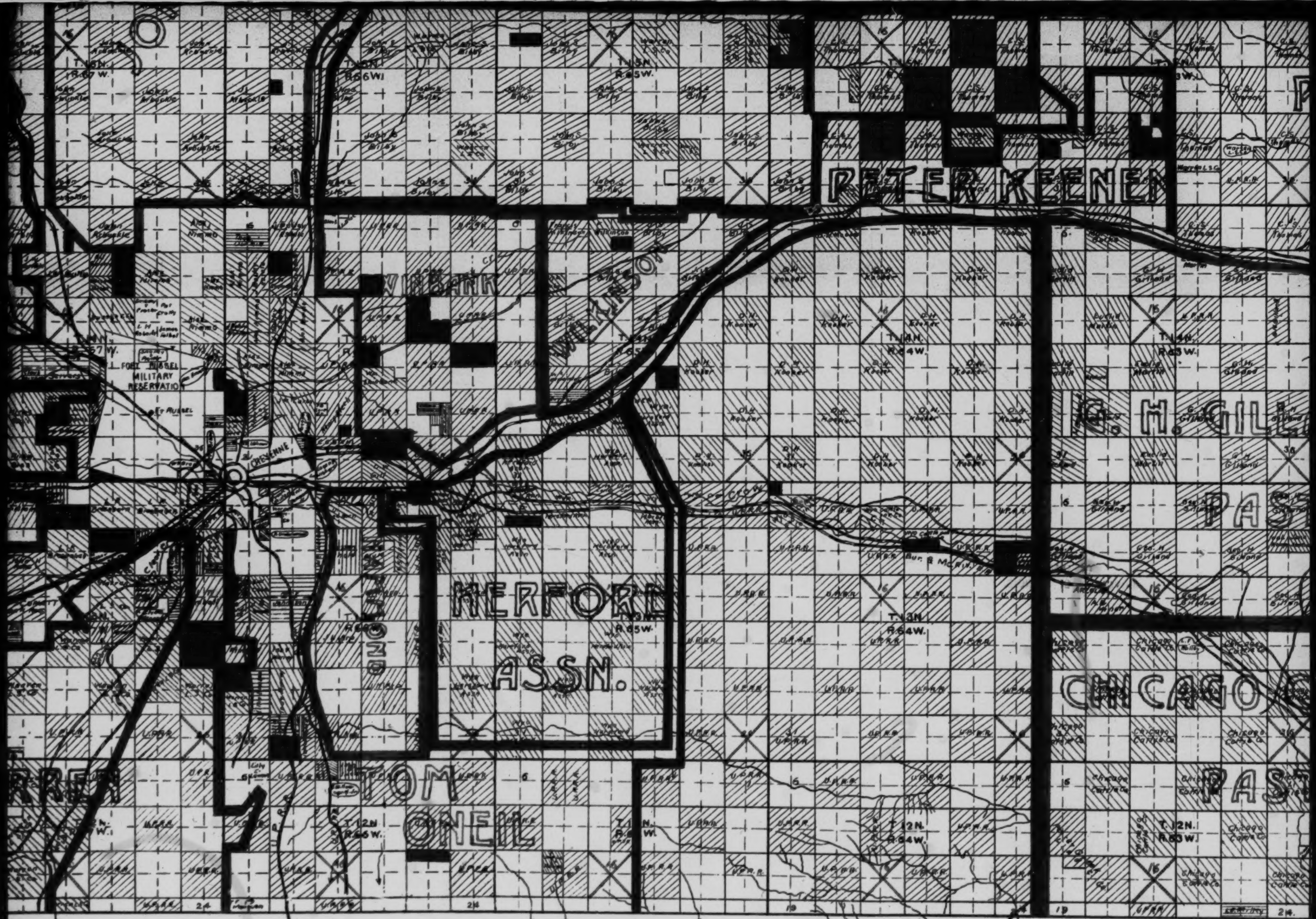


JOHN ARBUCKLE PASTURE
WARREN PASTURE
COLIN HUN
JOHN THOM
PETER KEENEN
WINBANK
WILKINSON
G. H. GILL
PAS
T.16N. R.67W.
T.16N. R.66W.
T.16N. R.65W.
T.16N. R.64W.
T.16N. R.63W.
T.15N. R.67W.
T.15N. R.66W.
T.15N. R.65W.
T.15N. R.64W.
T.15N. R.63W.
T.14N. R.67W.
T.14N. R.66W.
T.14N. R.65W.
T.14N. R.64W.
T.14N. R.63W.
John Arbuckle
John S. Bilby
Warren L.S.Co.
A. Wilkinson
John Wilkinson
Colin Hunter
Chas. S. Thomas
C.S. Thomas
D.H. Kooker
Colin Martin
G.H. Gilland
Alex Nimmo
U.P.R.R.
FORT RUSSEL MILITARY RESERVATION
Ft. Russel
CHEYENNE
Bur. & Mo. Riv. R.R.
Wyo. Cattle Co.
Crow Cr.
6
16
31
36


COLIN HUNTER PASTURE
JOHN THOMAS PASTURE
J. WILKINSON
TER KEENEN
G. H. GILLAND PASTURE
GILLAND
DOLAN
NEBRASKA
T.15N. R.63W.
T.15N. R.62W.
T.15N. R.61W.
T.15N. R.60W.
T.14N. R.64W.
T.14N. R.63W.
T.14N. R.62W.
T.14N. R.61W.
R.60W.
Colin Hunter
C.S. Thomas
John Wilkinson
G.H. Gilland
U.P.R.R.
Euclid Martin
SALEM


HERSIG BROS.
PASTURE
GILCHRIST
RGUSON
COLE
WILLIAMS
HOLT
ROBERTS
WARREN
ORA HALEY
FORT RUSSEL
MILITARY
RESERVATION
CHEYENNE
BUFORD
R.70W.
R.67W.
R.66W.
T.12N.
R.69W.
R.68W.
R.66W.
COLORADO

"EXHIBIT D"

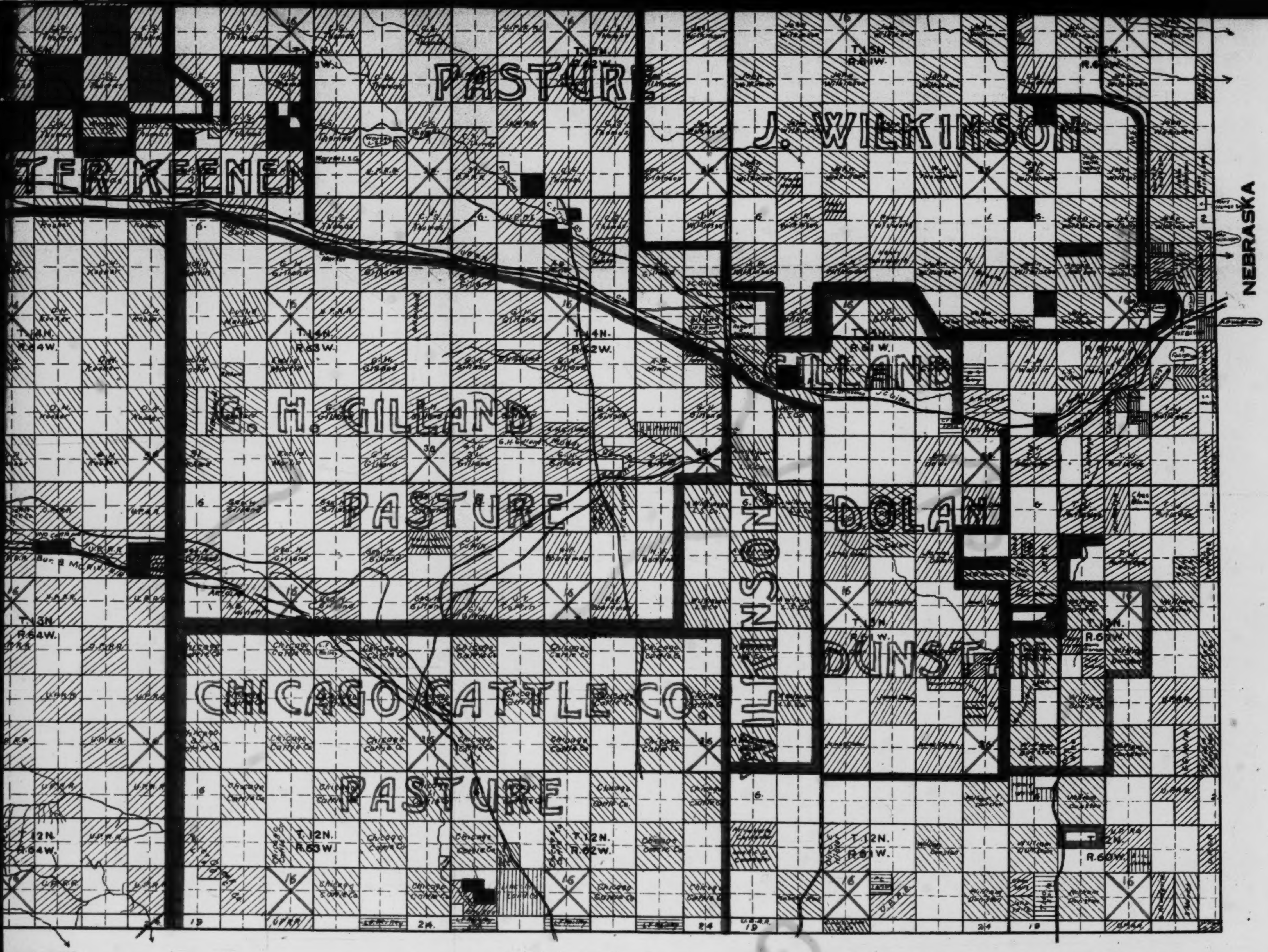

T.15N. R.67W.
T.15N. R.66W.
T.15N. R.65W.
PETER KEENEN
WILKINSON
FORT RUSSEL MILITARY RESERVATION
CHEYENNE
T.14N. R.64W.
T.14N. R.63W.
G. H. GILL
PAS
HERFORD ASSN.
T.13N. R.65W.
T.13N. R.64W.
CHICAGO
TOM ONEIL
T.12N. R.66W.
T.12N. R.65W.
T.12N. R.64W.
T.12N. R.63W.
Bur. & Mo. R.R.
U.P.R.R.

COLORADO

▬ STATELANDS

▬ FILINOS

× 16 & 36 SCHOOL


PASTURE
J. WILKINSON
TER KEENEN
G. H. GILLAND
PASTURE
GILLAND
DOLAN
WILKINSON
DUNSTAN
CHICAGO CATTLE CO.
PASTURE
NEBRASKA
T.15N. R.63W.
T.15N. R.62W.
T.15N. R.61W.
T.15N. R.60W.
T.14N. R.64W.
T.14N. R.63W.
T.14N. R.62W.
T.14N. R.61W.
R.60W.
T.13N. R.64W.
T.13N. R.61W.
T.13N. R.60W.
T.12N. R.64W.
T.12N. R.63W.
T.12N. R.62W.
T.12N. R.61W.
T.12N. R.60W.
U.P.R.R.
Chicago Cattle Co.
John Wilkinson
G.H. Gilland
William Dunstan
Euclid Martin
C.S. Thomas
16
36

ATELANDS
LINOS
& 36 SCHOOL

VALENTINE BAKER: CHEYENNE, WYO.

THE NORRIS PETERS CO., WASHINGTON, D.C.

VIEWS OF THE MINORITY.

In our opinion the Committee on Expenditures in the Interior Department is without any jurisdiction to inquire into the matters complained of against the Warren Live Stock Co.; and if it has jurisdiction and an investigation would develop that there had been lands unlawfully fenced by said company, that nothing could be accomplished, as the statute of limitation would bar any proceedings. In the report submitted by the majority of the committee I am unable to agree with the conclusion that on September 6, 1906, the Warren Live Stock Co. did unlawfully have within their inclosure Government lands. Inspector E. B. Linnen did claim in his report that on the date named there was Government land within the inclosure of the Warren Live Stock Co., but this statement was challenged, and in January, 1907, at the instance of President Roosevelt, Mr. M. D. Purdy, Assistant Attorney General, made a very thorough and full examination of the evidence submitted by Inspector Linnen and reported that in his opinion no portion of the public domain was at the time inclosed within the pasture of the Warren Live Stock Co. and that the fence complained of by Inspector Linnen was in all probability the fence of some other person or persons. It also appears from the files that subsequent to the Linnen investigation other investigations were made, the final investigation having been completed in August, 1907, and the Commissioner of the General Land Office, in a letter dated December 12, 1910, states that when the final investigation was completed in August, 1907, no unlawful inclosure was then being maintained by the said Warren Live Stock Co. either in the State of Colorado or in the State of Wyoming, and that upon September 25, 1907, the Chief of Field Division at Denver, Colo., and also at Cheyenne, Wyo., were directed to close the case against the said company.

Chas. H. Burke.

The undersigned minority members of the Committee on Expenditures in the Interior Department are of the opinion that the committee is without jurisdiction to inquire into the matters referred to in its report on certain alleged unlawful inclosures of public lands in the year 1906, and submit that if the committee had jurisdiction no good purpose could be served by such an inquiry. We announced these views before the committee took the matter up for consideration, and still adhere to them. It should be remembered that the report of the majority is based entirely upon certain letters, copies of which were received from the Interior Department; that no hearings were had, and none of the persons affected by or referred to in the correspondence were called before the committee. The report was first written in March, 1912, by the majority of the subcommittee; was laid before the full committee in August, 1912. It was given to the public press just before the general election in 1912, at which Senator F. E. Warren, a stockholder in the Warren Livestock Co., was a candidate, and was widely circulated through the press.

The Linnen report, on which the majority bases its claim that on September 7, 1906, the Warren Livestock Co. was maintaining unlawful inclosures of Government land, was made at a time when Senator Warren was a candidate for reelection to the Senate of the United States. The report now under consideration was given out, as above stated, just before the general election in 1912, when Senator Warren was again a candidate, and the report is now officially given out by the majority of the committee at a time when the Wyoming Legislature, before which Senator Warren is a candidate for reelection, is in session.

Briefly stated, the correspondence secured from the Interior Department, which is all there is to this alleged investigation, discloses that in the spring of 1906 Secretary of the Interior Hitchcock had differences with Senator Warren and the then commissioner of the General Land Office, W. A. Richards, of Wyoming, and claimed to be dissatisfied with the attitude of the United States Attorney for Wyoming, Mr. Timothy Burke, in handling land cases. Early in 1906, the Secretary instructed Special Land Inspector E. B. Linnen to take charge of the investigation of alleged illegal fencing and other alleged land-fraud matters in Wyoming, as a result of which instructions Inspector Linnen submitted a report dated September 7, 1906, of considerable length, on which report the majority of the committee bases its conclusions. This report charged that there were upward of 456,400 acres of public land unlawfully inclosed in the States of Wyoming and Colorado, and named about 40 corporations and persons who were alleged to be maintaining such unlawful inclosures, among which corporations was the Warren Live Stock Co., which company it was claimed had inclosed about 32,000 acres of public lands in Wyoming and upward of 13,000 acres in Colorado. This report also charged the United States attorney, Timothy Burke, with improper acts in connection with public lands and particularly with failure to enforce the law against unlawful inclosures of public lands.

This Linnen report, with its maps and exhibits, was submitted by Secretary Hitchcock to President Roosevelt, who referred it to the Department of Justice. After full consideration by Messrs. Purdy and Cooley and Attorney General Bonaparte, a report was submitted to President Roosevelt, in which the Linnen report, after a careful analysis of the same, and its maps and exhibits, was severely criticized. This report of the Department of Justice called attention to the fact that the maps and exhibits filed with the report failed utterly to support Inspector Linnen's contentions that the Warren Live Stock Co. was maintaining unlawful inclosures of public lands, and that the report itself, examined in the light of the maps submitted for the purpose of sustaining it, like Dr. Cook's fake records of alleged polar discoveries, furnished its own refutation.

President Roosevelt, in letters to Secretary Hitchcock under date of January 17 and 26, 1907, denounced the Linnen report as "a bundle of scurrilous allegations the truth of which there is not so much as an attempt to prove." And he further states that he agrees with Attorney General Bonaparte "that the whole report of Mr. Linnen, as submitted to me by you (Secretary Hitchcock) in your letter of

November 30 and used by you as the basis of that letter, is so discredited that no action can be taken upon it, and that there must be an entirely new examination of the land in question to determine whether there has been any illegal action whatever."

The examination of the lands and fences of the Warren Live Stock Co., thus suggested by President Roosevelt, was undertaken as soon as the weather would permit in 1907 by Messrs. Scott, Altom, Fahey, and Lawton, agents of the General Land Office, who made complete surveys and examinations, and in June and July, 1907, submitted reports to the effect that the Warren Live Stock Co. had no public lands inclosed. In September, 1907, the Commissioner of the General Land Office took final action on the reports approving them and closing the cases. The record shows that in February, 1906, a few months before Inspector Linnen made his report, N. J. O'Brien, one of the oldest and most trusted agents of the Interior Department, had made a report to the effect that the Warren Live Stock Co. had no public lands inclosed.

The above-mentioned reports of the special agents of the Land Office, made in June and July, 1907, as above stated, and the letters of the Commissioner of the General Land Office approving the same are not included in the report of the majority, though the committee had copies of the same and it was understood that they were to be included in the report. The letters of the commissioner closing the cases are appended hereto, and speak for themselves.

From the above it will be seen that the finding of the majority, that at the date of the Linnen report the Warren Live Stock Co. had large acreages of public lands inclosed, has no basis or excuse except the Linnen report, which report, according to the investigation of the Department of Justice, concurred in by President Roosevelt, was disproven by the very maps and exhibits presented in support of it, and further utterly discredited by reports of special agents of the General Land Office made immediately prior and subsequent to the Linnen report.

We submit that the above statement, based on the record herein presented, raises a strong presumption that this entire alleged investigation could have had no other object or purpose than a purely political one to discredit Senator Warren, who is a stockholder in the Warren Live Stock Co. There is no claim of any unlawful inclosures within the last six years, and the claim of unlawful inclosures in 1906 is disproven by the overwhelming evidence of the record.

F. W. Mondell.
Chas. H. Burke.

Department of the Interior,
General Land Office,
Washington, September 25, 1907.

M. W. B. Pugh,
Chief of Field Division, Cheyenne, Wyo.

Sir: June 22, July 10 and 29, 1907, you submitted reports of the examination of Special Agents J. C. Scott and J. B. Altom of an unlawful inclosure alleged to have been maintained by the Warren Live Stock Co. in Laramie County, Wyo. It was found as the result of such examination that said company maintains no illegal inclosure of public lands in Wyoming, and it is recommended that the case be closed.

The case has accordingly been marked closed on the records of this office, and you will make the proper notations on your docket closing the case.

Very respectfully,

FRED DENNETT, *Assistant Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 25, 1907.

Mr. M. D. McENIRY,
Chief of Field Division, Denver, Colo.

SIR: July 20, 1907, this office directed investigation of an alleged unlawful inclosure maintained by the Warren Live Stock Co. in Colorado, in connection with their inclosure in Laramie County, Wyo.

August 30, 1907, you transmitted the joint report of Special Agents John L. Fahey and D. J. Lawton, finding upon personal examination that said inclosure embraces the following lands:

	Acres.
State lands leased by said company	16,676.11
Railroad lands owned by said company	19,186.66
Entries and filings (31 in number)	3,915.28
Vacant public lands	0.00
	39,778.05

No fraud is found in connection with the entries included in said inclosure.

In view of the fact ascertained by the special agents that no unlawful inclosure exists the case has been closed on the records of this office.

You will make the proper notations on your docket.

Very respectfully,

FRED DENNETT, *Assistant Commissioner.*

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